(37,444)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 6

LOCAL 167 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA, CARL FIRESTONE, CHARLES GERSHOWITZ, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

VOL. I

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IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Equity. No. 52-30

UNITED STATES OF AMERICA, Petitioner,

against

GREATER NEW YORK LIVE POULTRY CHAMBER OF COMMERCE et al., Defendants

AMENDED PETITION—Filed April 16, 1930

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The United States of America, by Charles H. Tuttle, United States Attorney for the Southern District of New York, and by John Lord O'Brian and Walter L. Rice, acting under the direction of the Attorney General, brings this amended petition against the persons named hereafter as defendants.

I

Purpose of Suit

This proceeding is brought under the provisions of Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," (26 Stat. 209), commonly known as the Sherman Anti-Trust Act, to prevent and restrain defendants hereafter named from further engaging, in this district and elsewhere in the United States, in violation of Sections 1 and 2 of said Act of Congress, in the conspiracy in restraint of interstate trade and commerce in the distribution of live and freshly slaughtered poultry, which is hereafter more particularly described.

[fol. 3] II

Description of Interstate Commerce in Live Poultry

Origin of Poultry

(1) For many years last past a large and important part of the trade and commerce among the several States of the United States has consisted in the shipment of live poultry from, among others, the States of New Hampshire, Massachusetts, Rhode Island, Connecticut, Pennsylvania, Maryland, Virginia, Minnesota, Wisconsin, Iowa, Illinois, Indiana, Ohio, Missouri, North Carolina, Kansas, Tennessee, Kentucky, Oklahoma, Texas, Arkansas, and Mississippi, to and into the States of New York and New Jersey and from the State of New York to and into the State of New Jersey and from the State of New Jersey to and into the State of New York, which said trade and commerce is now here described in further detail, that is to say:

Shippers. Receivers. Marketmen

(2) Live poultry is shipped by a large number of persons, firms and corporations (known to the trade and hereafter described as shippers) from States other than New York and New Jersey into New York and New Jersey to persons, firms and corporations, known to the trade and hereafter described as commission merchants or receivers, who, in turn, sell and deliver said poultry as agents for and on behalf of said shippers. In some instances the said receivers have purchased such poultry in whole or in part in said States other than New York and New Jersey, and have shipped the same into New York and New Jersey, either wholly on their own account or by way of joint venture with the said shippers. Receivers who receive the same in the State of New York sell and ship the poultry so received, in some instances to persons, firms and corporations in the State of New York who are dealers in freshly slaughtered poultry (known to the trade and hereafter described as marketmen) and, in some instances, from the State of New York into the State of New Jersey to marketmen having their places of

business therein. Receivers who receive poultry in the State of New Jersey sell and ship the poultry so received, in some instances, to marketmen in the State of New Jersey, and in some instances, from the State of New Jersey into the State of New York to marketmen having their places of business therein. Marketmen having their places of business in the State of New Jersey pur- [fol. 4] chase live poultry, in some instances, from receivers in the State of New Jersey and, in some instances from receivers in the State of New York, and ship the same from the State of New York into the State of New Jersey. Marketmen having their places of business in the State of New York purchase live poultry, in some intances, from receivers in the State of New York and, in some instances, from receivers in the State of New Jersey, and ship the same from the State of New Jersey into the State of New York.

Poultry Dealers and Butchers

(3) Marketmen having their places of business in the State of New York, sell and (after first causing the same to be slaughtered in their places of business) ship the poultry so purchased, in some instances direct to consumers and, in some instances, to persons, firms and corporations engaged in the business of selling freshly slaughtered poultry (known to the trade and hereafter described as poultry dealers) and butchers having their places of business in the State of New York and, in some instances, from the State of New York into the State of New Jersey to poultry dealers and butchers having their places of business therein. Marketmen having their places of business in the State of New Jersey, sell and (after first causing the same to be slaughtered in their places of business) ship the poultry so purchased, in some instances, direct to the consumers and, in some instances, to poultry dealers and butchers in the State of New Jersey and, in some instances, from the State of New Jersey into the State of New York to poultry dealers and butchers having their places of business therein. Poultry dealers and butchers having their places of business in the State of New Jersey purchase the said poultry from marketmen in the State of New Jersey and, in some instances from marketmen in the State of

New York and (after first causing the same to be slaughtered in the places of business of the said marketmen) ship the same from the State of New York into the State of New Jersey. Poultry dealers and butchers having their places of business in the State of New York purchase the said poultry from marketmen in the State of New York and, in some instances, from marketmen in the State of New Jersey and (after first causing the same to be slaughtered in the places of business of the said marketmen) ship the same from the State of New Jersey into the State of New York.

[fol. 5] (4) Said shippers, receivers, marketmen, poultry dealers and butchers are so numerous that it is impracticable to set forth their names herein.

Area Affected by Restraint

(5) The receivers as aforesaid, all marketmen, poultry dealers and butchers as well as a great majority of all of the ultimate consumers of the said poultry are located in the Cities of New York, Newark, Hoboken, Jersey City, Paterson and in other parts of the States of New York and New Jersey, situated within, to-wit, thirty miles of the boundaries of the City of New York and forming what is commonly known, and is hereafter described as the Metropolitan Area.

Continuity of Interstate Commerce

(6) Substantially all of such live and freshly slaughtered poultry is sold and deliveries are effected within 24 hours after the arrival of the said poultry in the Metropolitan Area, said poultry passing through the various channels above described, from the shipper to the possession of receivers, marketmen, poultry dealers and butchers (and from receivers, marketmen, poultry dealers and butchers to the ultimate consumer) continuously and without substantial delay other than such as is occasioned by unloading, crating, inspection, transporting and slaughtering. Throughout the period above described there has been a constant and continuous flow of shipments of live poultry (and the same poultry in the form of freshly slaughtered poultry) in commerce among the several States from States other than New York and New Jersey to and into said

Metropolitan Area, and from that part of the Metropolitan Area located in the State of New York into that part of the Metropolitan Area located in the State of New Jersey, and from that part of the Metropolitan Area located in the State of New Jersey into that part of the Metropolitan Area located in the State of New York; and so through the aforesaid channels of trade from the shipper to the consumer thereof, the value of the poultry so shipped being in excess of $50,000,000 annually.

III

Description of Certain Defendants

(7) Whenever in this amended petition any person is described by means of an initial or a name other than his true name, such true name is to the petitioner unknown.

[fol. 6] Chamber of Commerce

(8) At all time hereafter mentioned, the greater New York Live Poultry Chamber of Commerce, hereafter described as the Chamber of Commerce, was and now is a voluntary association organized and existing under and by virtue of the laws of the State of New York with an office and place of business at 429 West 14th Street, City, County, and State of New York. A large majority of the marketmen having places of business within the City of New York were and now are members of the Chamber of Commerce.

(9) Commencing on or about May 9, 1927, and continuously thereafter until October 1, 1928, Benjamin Simon was Supervisor of the Greater New York Live Poultry Chamber of Commerce and Samuel Lipkin was an accountant in its employ.

(10) At all times hereafter mentioned the following persons, among others, were either in their own right or through the business entities which they controlled, members of the Chamber of Commerce and at all time hereafter mentioned were engaged in business as marketmen: Barney Azwolinsky; Morris Azwolinsky; Al Berman; Herman Berman; Charles Bistretsky; Abraham Bloom; Isidore Bloom; Morris Bloom; Isidore Blumenfeld; Morris Brown (of the Irving Poultry Co.); Morris Chast; Jacob

Damsky; Morris Damsky; Harry Dworkin; Ida Frank; Isidore Frank; Hyman Frankfater; Jacob Frankfater; Abraham Franzel; Samuel Friedman; Morris Frisman; Morris Gerber; Max Glantz; Max Gold, Samuel Gold; Abraham Goldberg (of the Pitt St. Live Poultry Market); Samuel Goldstein; Isidore Gordon (of the F. G. T. Live Poultry Market); Morris Gordon; Isaac Greenstein (of the Tremont Live Poultry Market); Kalman Gross; Hyman Haber; Isidore Haber; Abraham Harrison; Samuel Harrison; Morris Hellman; Dave Hirshon; L. Hornstein (of Hornstein & Spatz); Samuel Isaacson; Morris Joselson; Samuel Kadin; Isaac Kaplan (of the Prospect Poultry Co.); Leo Kassoff; Morris Klieger; Jacob Koslow; Alter Kupersmith (of K. Gross, Inc.); Simon Lapof; Goodman Levy; Isaac Lipschitz; Samuel Mamber; Joseph Manne; Samuel Manne; Joe Mines; Jacob Mintz; Charles Mirotznik; Hyman Nierenberg; Abraham Pepper; Hyman Raby; [fol. 7] Jacob Reisner; Max Rosen; Harry Rubin; Samuel Sahn; Ole Salthe (of the Dexter Poultry Co., Inc.); Louis Schiller; Joseph Scull; William Simon; Max Sokoloff; Paul Sosnik; Sidney Sosnik; Louis Spatz; Aaron Steinberg (of the Monroe Poultry Co.); Jacob Turkowitz (of the F. G. T. Live Poultry Market); Louis Weidberg; Max Wolas; Abraham Wolfe; Irving Yarmouth (associated in business with Kalman Gross).

Chauffeurs' Union

(11) Local 167 of the International Brotherhood of Chauffeurs, Teamsters, Stablemen, and Helpers of America, hereafter sometimes referred to as the Chauffeurs' Union, is a voluntary association, organized and existing under and by virtue of the laws of the State of New York, having an office in the Borough of Manhattan in the City of New York. Virtually all persons engaged as employees in the handling, crating and trucking of live poultry after its arrival in that portion of the Metropolitan Area lying within the State of New York are members of the said local. Their services are essential to and they are, in fact, engaged in the transportation of live poultry and the handling thereof necessary and incidental thereto from receivers to marketmen and from marketmen to poultry dealers and butchers.

(12) At all times hereafter mentioned the following persons were officers and employees of the Chauffeurs' Union and occupied the positions set forth opposite their respective names:

David Kaufman—Secretary-Treasurer and Business Representative;
Arthur Herbert, alias "Tpotsie" Herbert—Delegate;
Harry Schomer—Delegate.

Shochtim Union

(13) At all times hereafter mentioned the Official Orthodox Poultry Slaughterers of America, Inc., was and now is a corporation organized and existing under and by virtue of the laws of the State of New York. A majority of consumers of live poultry are persons of the Jewish faith who will not purchase the poultry aforesaid unless it is slaughtered in accordance with Jewish dietary laws. A person competent under the Jewish dietary laws so to slaughter poultry is known to the trade as a shochet (plural shochtim). The said poultry is slaughtered by the said [fol. 8] shochtim in the employ of the marketmen. A great majority of the said shochtim are members of the Official Orthodox Poultry Slaughterers of America, Inc.

(14) From the commencement of the conspiracy and continuously thereafter until October 1, 1928, Kalman Shapiro was President of the Official Orthodox Poultry Slaughterers of America, Inc., and from the commencement of said conspiracy and continuously thereafter until the filing of this petition the following persons were officers and employees of the Official Orthodox Poultry Slaughterers of America, Inc., and occupied the positions set forth opposite their respective names:

Charles Herbert—Delegate;
Joseph Weiner—Director and Delegate.

Individual Defendants

(15) Barney Azwolinsky; Morris Azwolinsky; Al Berman; Herman Berman; Charles Bistretsky; Abraham Bloom; Isidore Bloom; Morris Bloom; Isidore Blumenfeld; Morris Brown (of the Irving Poultry Co., Inc.); Mor-

ris Chast; John J. Conlin; Jacob Damsky; Morris Damsky; Harry Dworkin; Carl Firestone; Hyman Fishman; Ida Frank; Isidore Frank; Hyman Frankfater; Jacob Frankfater; Abraham Franzel; Samuel Friedman; Morris Frisman; Morris Gerber; Charles Gershowitz; Max Glantz; Max Gold; Samuel Gold; Abraham Goldberg (of the Pitt Street Live Poultry Mkt.); Samuel Goldstein; Isidore Gordon; Morris Gordon; Greater New York Live Poultry Chamber of Commerce; Isaac Greenstein (of the Tremont Live Poultry Market); Kalman Gross; Hyman Haber; Isidore Haber; Abraham Harrison; Samuel Harrison; Morris Hellman; Arthur Herbert; Charles Herbert; Harry Herbert; Dave Hirshon; L. Hornstein (of Hornstein & Spatz); Samuel Isaacson; Morris Joselson; Samuel Kadin; Isaac Kaplan (of the Prospect Poultry Company); Leo Kassoff; David Kaufman (alias "David Silver"); Max Keslin; Morris Klieger; Jacob Koslow; Alter Kupersmith (of K. Gross, Inc.); Simon Lapof; Michael Lax; Goodman Levy; Samuel Lipkin; Isaac Lipschitz; Local 167 of the International Brotherhood of Chauffeurs, Teamsters, Stablemen & Helpers of America; Samuel Mamber; Joseph Manne; Samuel Manne; Morris Markman (alias "Nigger"); Joe Mast; Joe Mines; Jacob Mintz; Charles Mirotznik; Abe [fol. 9] Newman; Hyman Nierenberg; Official Orthodox Poultry Slaughterers of America, Inc.; Abraham Pepper; Hyman Raby; Jacob Reisner; Max Rosen; Joseph Rosenman (Secretary of the Official Orthodox Poultry Slaughterers of America, Inc.); Julius Rosenstein; Murray Rosenstein (alias "Moe"); Sidney Rosenstein; Harry Rubin; Samuel Sahn; Ole Salthe (of the Dexter Poultry Company, Inc.); Louis Schiller; Harry Schomer; Joseph Scull; Samuel Silverman; William Simon; Max Sokoloff; Paul Sosnik; Sidney Sosnik; Louis Spatz; Aaron Steinberg (of the Monroe Poultry Company); Jacob Turkowitz (of the F. G. T. Live Poultry Market); Louis Weidberg; Joseph Weiner; Meyer Weiss; Aaron Weissler (alias "Arke"); Max Wolas; Abraham Wolfe and Irving Yarmouth are hereby made defendants to this petition.

Representative Defendants

Greater New York Live Poultry Chamber of Commerce; David Hirshon, President; Louis Spatz, Vice-President; Max Rosen, Treasurer; Jacob Reisner, Assistant Treas-

; Max Wolas, Secretary; Louis Cohen, William Simon, Charles Mirotznik, Louis Weidberg, Louis Gerber, Samuel Mamber, Abraham Franzel, Morris Gordon, Leo Kassoff, Abraham Harrison, Samuel Sahn, Samuel Gold, Directors; are hereby designated as representatives of all persons, corporations and voluntary associations who, from May 9, 1927, to October 1, 1928, or any part of that time, were members of said Chamber of Commerce, or who paid dues or money in any form to said Chamber of Commerce, either directly or indirectly, or who were employed by said Chamber of Commerce or any of its responsible officers or directors to aid in the distribution, marketing or transportation of live or freshly slaughtered poultry in the Metropolitan Area, or to do any act in furtherance of the conspiracy, or who, as compensation for discontinuing or agreeing to discontinue their business in whole or in part, either directly or indirectly received money or other consideration from said Chamber of Commerce or its responsible officers or directors or any group or association of marketmen operating during the period aforesaid in any part of the Metropolitan Area under the direction or guidance of officers, directors or members of said Chamber of Commerce; and as representatives they are hereby made defendants, as are all members of the class whom they represent, said class constituting a group so numerous that it [fol. 10] would be impracticable to bring them all before the court.

Greater New York Live Poultry Chamber of Commerce; Samuel Sahn, President; William Simon, Vice-President; Jacob Reisner, Treasurer; Philip Milavsky, Assistant Treasurer; Max Wolas, Secretary; Louis Spatz, Max Rosen, Charles Mirotznik, Louis Weidberg, Samuel Mamber, Morris Gordon, Dave Hirshon, Abraham Harrison, Morris Brown, Louis Cohen, Abraham Franzel, Directors; are hereby designated as representatives of all persons, corporations and voluntary associations who are at the time of filing the amended petition herein members of said Chamber of Commerce or who are employed by said Chamber of Commerce or any of its responsible officers and directors to aid in the distribution, marketing or transportation of live or freshly slaughtered poultry in the Metropolitan Area, or who have any interest in the assets of said Chamber of Commerce; and as representatives they are

hereby made defendants, as are all members of the class whom they represent, said class constituting a group so numerous that it would be impracticable to bring them all before the court.

Local 167 of the International Brotherhood of Chauffeurs, Teamsters, Stablemen & Helpers of America, Samuel Silverman, President; David Kaufman, Secretary-Treasurer and Business Representative, Arthur Herbert, Delegate; and Harry Schomer, Delegate; are hereby designated as representatives of all persons who were members of said Local 167 from May 9, 1927, to October 1, 1928, or any part of that time, or who paid dues to said Local 167, or who were employed by said Local 167 to aid in the marketing, distribution or transportation of live or freshly slaughtered poultry in the Metropolitan Area during any part of the time aforesaid; and as representatives they are hereby made defendants, as are all members of the class whom they represent, said class constituting a group so numerous that it would be impracticable to bring them all before the court.

Local 167 of the International Brotherhood of Chauffeurs, Teamsters, Stablemen & Helpers of America, Samuel Silverman, President; David Kaufman, Secretary-Treasurer and Business Representative; Arthur Herbert, Delegate; and Harry Schomer, Delegate; are hereby designated as representatives of all persons who are at the time of filing this petition members of said Local 167, and as [fol. 11] representatives they are hereby made defendants as are all members of the class whom they represent, said class constituting a group so numerous that it would be impracticable to bring them all before the court.

IV

Conspiracy

(16) The defendants named in paragraph 15 together with divers other persons to the United States Attorney unknown (said defendants and other persons being hereafter collectively described as conspirators) well knowing all matters of fact herein set forth, beginning on or about May 9, 1927, and continuously thereafter, within the Southern District of New York, entered into and engaged in a

conspiracy intended to restrain, and which, in fact, was in restraint of the aforesaid trade and commerce among the several States of the United States and which has had the following objects and effects:

Objects of Conspiracy

To prevent, hinder and restrain the divers persons engaged in purchasing, selling and shipping live and freshly slaughtered poultry in commerce among the several States, as above set forth, from so purchasing, selling and shipping the same;

To prevent, hinder and restrain all persons, other than those selected and assigned by the conspirators, from selling and delivering live and freshly slaughtered poultry to poultry dealers and butchers;

To prevent, hinder and restrain the sale and delivery of live and freshly slaughtered poultry from all sources whatever to poultry dealers and butchers in the City of New York except at or above minimum prices and/or on conditions dictated, fixed and agreed upon by the conspirators;

To prevent, hinder and restrain poultry dealers and butchers, engaged in business within the City of New York, from selling and delivering live and freshly slaughtered poultry except at or above minimum prices and on conditions fixed and agreed upon by the conspirators;

To prevent, hinder and restrain all marketmen from obtaining live poultry from any source whatever, except under conditions dictated, fixed and agreed upon by the conspirators, and further to prevent marketmen from dis-
[fol. 12] posing of their live poultry, either as live poultry or in the form of freshly slaughtered poultry, except on conditions dictated, fixed and agreed upon by the conspirators.

Said conspiracy is now described in further detail, that is to say:

Allotment

(17) It has been a part of said conspiracy that the conspirators should allot, and pursuant to said conspiracy, the conspirators have allotted poultry dealers and butchers doing business within the City of New York to the various conspirators doing business as marketmen in the City of New York, each such poultry dealer and each such butcher

being assigned to one particular marketman from whom said poultry dealer or butcher should be and has been compelled by the conspirators, in the manner hereafter set forth, to purchase all his poultry. Said poultry dealers and butchers so allotted constitute a substantial majority of all the poultry dealers and butchers engaged in purchasing live and freshly slaughtered poultry in the City of New York; said poultry dealers and butchers so allotted being so numerous that it is impracticable to set forth their names and the names of many of said poultry dealers and butchers being to the petitioner unknown.

(18) It has further been a part of said conspiracy that the conspirators should eventually obtain the inclusion in the above described scheme of allotment of substantially all the poultry dealers and butchers engaged in purchasing live and freshly slaughtered poultry in the City of New York, and that the conspirators should compel, in the manner and by the means hereafter set forth, all poultry dealers and butchers who should, from time to time, be included in said scheme of allotment, to obtain live and freshly slaughtered poultry exclusively from the particular marketman to whom said poultry dealers and butchers should have been allotted as aforesaid, and that the conspirators should prevent and restrain said poultry dealers and butchers engaged in business within the City of New York from purchasing, and from attempting to purchase live and freshly slaughtered poultry from any sources whatever, either within or without the State of New York, other than from the particular marketman to whom said poultry dealers and butchers should have been allotted as aforesaid; and that the conspirators should prevent and restrain all marketmen, and all other persons, including both those [fol. 13] making sales and shipments from within and those making sales and shipments from without the State of New York, from selling and delivering, and from attempting to sell and deliver live and freshly slaughtered poultry to any poultry dealers and butchers doing business within the City of New York, other than in accordance with the above described scheme of allotment.

Price Control

(19) It has further been a part of the said conspiracy that the conspirators should prevent and hinder all poultry dealers and butchers doing business within the City of New York from purchasing and attempting to purchase live or freshly slaughtered poultry from any source whatever at prices lower than those dictated, fixed and agreed upon by the conspirators as aforesaid, and that the conspirators should prevent and restrain all marketmen and all other persons from selling live and freshly slaughtered poultry to any poultry dealers and butchers at prices lower than those dictated, fixed and agreed upon by the conspirators as aforesaid.

Retail Price Control

(20) It has further been a part of said conspiracy that all marketmen, poultry dealers and butchers located in the City of New York should be permitted by the conspirators to sell live and fresh slaughtered poultry only on the conditions and at or above the minimum prices fixed and agreed upon by the conspirators as aforesaid, and that the conspirators should prevent and restrain all marketmen, poultry dealers and butchers engaged in business in the City of New York from freely conducting their several businesses and from selling and delivering and from attempting to sell and deliver live and freshly slaughtered poultry to consumers except at or above the minimum prices and on the conditions fixed and agreed upon by the said conspirators.

Enforcement of Allotment

(21) It has further been a part of said conspiracy that if any of said poultry dealers or butchers should attempt to purchase or obtain live or freshly slaughtered poultry from any source other than the particular marketman to whom he should have been allotted as aforesaid, either from within or from without the State of New York, or should attempt to purchase or obtain live or freshly slaughtered poultry from any source whatever at lower prices or on conditions [fol. 14] other than those dictated, fixed and agreed upon by the conspirators as aforesaid, or if any marketman or other person other than the particular marketman to whom such

poultry dealer or butcher should have been allotted as aforesaid, should attempt to sell or deliver live or freshly slaughtered poultry to such poultry dealer or butcher or to aid such poultry dealer or butcher to obtain live or freshly slaughtered poultry, or if the particular marketman to whom said poultry dealer or butcher should have been allotted should fail to observe the prices and conditions fixed and agreed upon by the conspirators as aforesaid, or if the said poultry dealers or butchers should fail to observe the prices and conditions dictated, fixed and agreed upon by the conspirators as aforesaid, then, and in any of said events the conspirators in the manner and by the means hereafter described, should seek to prevent and should prevent the completion and fulfilment of such purchases, sales and deliveries, and should punish poultry dealers, butchers, marketmen or other persons for attempting to make or aiding in making such purchases, sales or deliveries and should threaten and intimidate and prevent such poultry dealers, butchers, marketmen and other persons from making similar purchases, sales or deliveries in the future.

Method of Carrying Out the Conspiracy

(22) It has further been a part of said conspiracy that the conspirators, in order to carry out the objects set forth in paragraphs (16) to (21) inclusive, and so to carry out the restraint of trade and commerce among the several States as aforesaid, should employ and the conspirators have, pursuant to such conspiracy, in fact employed divers means and methods including among others:

(a) threats of physical violence against poultry dealers, butchers, marketmen, shippers, receivers, and others (as well as against their families, customers, and employees);

(b) assaulting and beating poultry dealers, butchers, marketmen, and their families, customers and employees;

(c) attempting to create and creating throughout the industry generally and in the minds of persons engaged [fol. 15] therein a feeling of fear and terror for the purpose of preventing all persons from, in any manner, resisting the operation of the conspiracy aforesaid;

(d) forcibly detaining, destroying and damaging vehicles engaged in conveying live poultry both in interstate commerce and intrastate commerce for marketmen, poultry dealers and butchers, and others;

(e) cutting the tires of, and otherwise injuring such vehicles and their contents;

(f) destroying and damaging poultry being transported for shippers, marketmen, poultry dealers and butchers;

(g) placing bombs containing explosives, incendiary matter, and poisonous and suffocating gases in the places of business and vehicles of poultry dealers, butchers and marketmen;

(h) forcibly preventing and obstructing deliveries of poultry to and by marketmen, poultry dealers and butchers;

(i) instigating the refusal of the defendant Chauffeur's Union and its members to load, unload, convey, deliver or handle live and freshly slaughtered poultry;

(j) refusing by agreement and concerted action to deal with, or to sell live poultry to, or to buy live poultry from poultry dealers, butchers, marketmen, and receivers;

(k) setting fire to the stores, vehicles and goods of poultry dealers, butchers, marketmen and receivers;

(l) collecting and making levies from poultry dealers, butchers and marketmen, and from other persons (including persons opposed to and persons friendly to the carrying out of said conspiracy) for defraying the expenses of the conspirators in carrying out this conspiracy;

(m) using threats, violence, boycotts, refusals to load, and other means to the United States Attorney unknown, to enforce the payment of such contributions and levies;

(n) coercing marketmen to employ large numbers of employees in excess of their reasonable requirements under the guise of union regulations;

[fol. 16] (o) instigating the refusal of the defendant Shoctim Union and its members to slaughter poultry for poultry dealers, butchers and marketmen;

(p) assembling riotous and threatening gatherings near the places of business of marketmen, shippers, retailers and butchers;

(q) following and spying upon poultry dealers, butchers, marketmen, and upon their salesmen, solicitors, and truck drivers;

(r) paying large sums of money to marketmen and poultry dealers in return for agreements by them to discontinue business in whole or in part in the city of New York;

(s) employing persons known to the conspirators and to persons engaged in the poultry trade generally as "gangsters", for the purpose of carrying out the above described means and methods, and particularly for the purpose of intimidating, threatening, assaulting and beating such poultry dealers, butchers, marketmen and their families, customers and employees and injuring and destroying their property;

(t) and many other means and methods to the petitioner unknown.

(23) The said defendants and other conspirators, (by the methods and means hereinbefore described, have engaged in a combination and conspiracy to restrain and monopolize the aforesaid trade and commerce, have attempted to monopolize, and have monopolized the aforesaid trade and commerce in live and freshly slaughtered poultry, in violation of the Act of Congress of July 2, 1890, entitled "An Act to regulate trade and commerce against unlawful restraints and monopolies".

V

Threat of Continuing Conspiracy

(24) On August 20, 1928, your petitioner filed an information against 68 defendants, such defendants being substantially the same individuals and organizations as those herein named as defendants. Thereafter the said conspirators temporarily desisted from most but not all of [fol. 17] the acts alleged in paragraph 22, (a) to (s) inclusive, for such time as they should deem participation therein precarious; intending, nevertheless, to resume said

acts as soon as they should deem it safe to do so. Said conspiracy has never been abandoned by the defendants or any of them although the conspirators have suspended temporarily their activity thereunder.

(25) The Greater New York Live Poultry Chamber of Commerce, Local 167 of the International Brotherhood of Chauffeurs, Teamsters, Stablemen & Helpers of America, and the Official Orthodox Poultry Slaughterers of America, Inc., have been employed as essential instrumentalities in said conspiracy. All of these organizations are still in existence, none of them having been abandoned or dissolved, by the conspirators. The conspirators for the most part still control all of the important offices in said organizations and occupy strategic positions in the trade, rendering it possible for them to resume at will their illegal acts in furtherance of the conspiracy.

(26) Within the twenty years last past, the conspirators and their business predecessors have engaged in a series of similar or related conspiracies which have been continuous except for the temporary cessations inspired by successive federal, state and private investigations.

(27) Since August 20, 1928, and up to the time of filing the amended petition herein, the defendants, together with divers other persons to the petitioner unknown, have committed the overt acts described in clauses (a), (b), (d), (e), (f), (i), (l), (m), and (n) of paragraph (22), that is to say:

(a) threats of physical violence against poultry dealers, butchers, marketmen, shippers, receivers, and others (as well as against their families, customers and employees);

(b) assaulting and beating poultry dealers, butchers, marketmen and their families, customers and employees;

(d) forcibly detaining, destroying and damaging vehicles engaged in conveying live poultry both in interstate commerce and intrastate commerce for marketmen, poultry dealers and butchers, and others;

[fol. 18] (e) cutting the tires of, and otherwise injuring such vehicles and their contents;

(f) destroying and damaging poultry being transported for shippers, marketmen, poultry dealers and butchers;

(i) instigating the refusal of the defendant Chauffeurs' Union and its members to load, unload, convey, deliver or handle live and freshly slaughtered poultry;

(l) collecting and making levies from poultry dealers, butchers and marketmen, and from other persons (including persons opposed to and persons friendly to the carrying out of said conspiracy) for defraying the expenses of the conspirators in carrying out this conspiracy;

(m) using threats, violence, boycotts, refusals to load, and other means to the United States Attorney unknown, to enforce the payment of such contributions and levies;

(*m*) coercing marketmen to employ large numbers of employees in excess of their reasonable requirements under the guise of union regulations.

(28) Since August 20, 1928, and up to the time of filing the amended petition herein, said conspirators have maintained and continued the existence and operation of the Greater New York Live Poultry Chamber of Commerce for the sole purpose, and with the intention, of employing it as a device by which they may resume all of the illegal acts set out in the amended petition herein as soon as they may deem it safe to do so; and the said Chamber of Commerce and its representatives have collected, and are now collecting, large sums of money from the poultry marketmen, and other persons to the petitioner unknown, with the design and intention of using said sums in furtherance of their plan to revive all of the illegal acts set out in the amended petition herein.

(29) Since August 20, 1928, and up to the time of filing the amended petition herein, the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, its officers, representatives and members have continued the practice, alleged in the amended petition herein, of compelling marketmen to employ an excessive number of [fol. 19] workmen, and in addition thereto, have committed and are committing the following acts:

(a) In the event of the failure of marketmen to employ the number of workmen specified by the representatives of

said Chauffeurs' Union, they have prevented and are preventing said marketmen from loading poultry at the railroad terminals in the State of New York and the State of New Jersey and the commission houses in the State of New York.

(b) They have effectively prevented and are preventing said marketmen from obtaining poultry both in the State of New York and in the State of New Jersey, and from shipping said poultry from the State of New York into the State of New Jersey and from the State of New Jersey into the State of New York.

(c) They have destroyed vehicles and cut tires belonging to said marketmen and have employed threats against them and persons who have attempted to sell to them.

All of the acts described herein constituted an essential part of the conspiracy under indictment No. C 61-824, pursuant to which 68 defendants were convicted; and unless this court shall issue an appropriate injunction restraining the defendants from carrying out the said conspiracy, by any of the means and methods described in the amended petition herein, or otherwise, the defendants will resume all of the illegal acts described in this amended petition for the purpose of accomplishing all of the original objects of the said conspiracy.

(30) Since August 20, 1928, and up to the time of filing the amended petition herein, the Official Orthodox Poultry Slaughterers of America, Inc., its officers, representatives, and members have conspired and cooperated, and are conspiring and cooperating, with [illegible]ternational Brotherhood of Teamsters, Chauffeurs, [illegible]en and Helpers of America, its officers, representatives and members to commit all of the acts alleged in paragraph 31. In pursuance thereof the members of the Official Orthodox Poultry Slaughterers of America, Inc., have refused to slaughter live poultry for marketmen who did not employ the number of workmen required by the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of [fol. 20] America. Said practice on the part of the Official Orthodox Poultry Slaughterers of America, Inc., its officers, representatives, and members constituted an essential part of the conspiracy charged in indictment No. C 61-824.

(31) From January, 1929, up to and including January 1, 1930, the precise dates being to the petitioner unknown, many of the conspirators herein named as defendants, organized and operated under a combination in the Borough of Manhattan for the purpose of allocating the retail poultry dealers and butchers among themselves and fixing prices at which poultry should be sold to said retail dealers and butchers, in a manner similar to that alleged in paragraphs 17 and 18. It was an essential part of the plan of said combination to place men, known to the trade as "watchers", at many of the markets for the sole purpose of recording the volume of sales of each marketman and the names of the customers to whom said marketman sold. It has been a further part of said plan that marketmen who sold poultry in excess of the amount allocated to them were compelled to pay a penalty to said combination. Said penalty was computed on the basis of the volume of poultry sold in excess of the amount allocated to the particular marketman. Your petitioner is informed and believes that said combination was organized and operated for the sole purpose of restraining trade in live and freshly slaughtered poultry, and that it constitutes a continuation of the original conspiracy.

(32) Unless this Court shall issue an appropriate injunction restraining the defendants from carrying out, by any of the means and methods described herein or otherwise, said combination and conspiracy, illegal agreements and practices of these defendants will be resumed and will constitute an irreparable public injury, in that there will not be a free flow of live poultry through and into the States of New York and New Jersey, prices of poultry will be increased artificially, and butchers, retail poultry dealers, marketmen, receivers and shippers will not be able to purchase and sell live poultry in a free, open and competitive market.

[fol. 21]

VI

Prayer

Wherefore petitioner prays:

(33) That writs of subpœna issue directed to each and every of the defendants impleaded by name, commanding

them, and each of them to appear and answer for themselves and for those whom they represent, under oath, the allegations contained in this amended petition, and to abide by and perform such orders and decrees as the Court may make in the premises.

(34) And, further, that the Court order, adjudge and decree that the defendants, and each of them, and each and all of the respective officers, directors, members, agents, servants, employees and all persons acting or claiming to act on behalf of the defendants, or any of them, and persons whom any of the defendants represent, be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the combination and conspiracy described in this amended petition, and from entering into, or performing, directly or indirectly, expressly or impliedly, any combination similar to that herein alleged to be illegal; that the defendants, and each of them, and each and all of the respective officers, directors, members, agents, servants, employees and all persons acting or claiming to act on behalf of the defendants, or any of them, and persons whom any of the defendants represent, be perpetually enjoined from doing any of the acts alleged in Section 22, (a) to (s) inclusive, or any acts in furtherance of a conspiracy to restrain trade and commerce in live poultry, or any acts tending to a monopoly or restraint upon such trade and commerce.

[fol. 22] (35) That the petitioner, notwithstanding this prayer, have such other further and general relief as the nature of the case may require and the Court may deem proper.

That the petitioner have its costs.

United States of America, Charles H. Tuttle, United States Attorney for the Southern District of New York. William D. Mitchell, Attorney General. John Lord O'Brian, The Assistant to the Attorney General. Walter L. Rice, Special Assistant to the Attorney General.

Duly sworn to by Walter L. Rice. Jurat omitted in printing.

[fol. 23] IN UNITED STATES DISTRICT COURT

In Equity. No. 52-30

[Title omitted]

ANSWER TO AMENDED PETITION

The defendants, Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, Carl Firestone, Charles Gershowitz, Morris Markman (alias "Nigger"), Abe Newman, Official Orthodox Poultry Slaughterers of America, Inc., Joseph Rosenman (Secretary of the Official Orthodox Poultry Slaughterers of America, Inc.), Harry Schomer, Charles Herbert, Harry Herbert, David Kaufman (alias "David Silver"), Max Keslin, Samuel Silverman, Joseph Weiner and Aaron Weissler, by their attorney, Samuel H. Kaufman for their answer to the Amended Petition herein, respectfully show this Court:

First. Deny each and every allegation contained in the Paragraph designated "(1)" thereof, except insofar as it is therein alleged that Live Poultry is shipped from certain states other than the State of New York into the State of New York.

Second. Deny each and every allegation contained in the Paragraph designated "(2)" thereof, except insofar as it is therein alleged that Live Poultry is shipped by persons, firms and/or corporations known to the trade as shippers, from states other than New York into the State of New York to persons, firms and/or corporations known to the [fol. 24] trade as receivers, said receivers being purchasers of said poultry from said shippers; and that said receivers, who receive said poultry in the State of New York, sell the same to persons, firms and/or corporations in the State of New York, known to the trade as marketmen, who have their respective places of business in the State of New York, and who are dealers in freshly slaughtered poultry.

Third. Deny each and every allegation contained in the Paragraph designated "(3)" thereof, except insofar as it is therein alleged that marketmen, having their places of business in the State of New York, after slaughtering said

poultry in their places of business, sell the same direct to consumers and, in some instances, to persons, firms and/or corporations, known to the trade as poultry dealers and butchers, who are engaged in the business of selling freshly slaughtered poultry, and have their places of business in the State of New York.

Fourth. Deny that they have any knowledge or information thereof, sufficient to form a belief as to each and every of the allegations contained in the Paragraphs designated "(4)", "(7)", "(8)", "(9)" and "(10)" thereof.

Fifth. Deny each and every allegation contained in the Paragraphs designated "(5)", "(6)", "(16)", "(17)", "(18)", "(19)", "(20)", "(21)", "(23)", "(26)", "(27)", "(30)" and "(31)" thereof.

Sixth. Deny each and every allegation contained in the Paragraph designated "(11)" thereof, except insofar as it is therein alleged that Local 167 of the International Broth-
[fol. 25] erhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, is a voluntary association, organized and existing under and by virtue of the laws of the State of New York, having an office in the Borough of Manhattan, in the City of New York.

Seventh. Deny each and every allegation contained in the Paragraph designated "(12)" thereof, except insofar as it is therein alleged that David Kaufman was sometime Secretary-Treasurer and Business Representative, and that Arthur Herbert and Harry Schomer were sometime Delegates of the said Chauffeurs' Union.

Eighth. Admit the allegations contained in the Paragraph designated "(13)" thereof, except insofar as it is therein alleged "a great majority of the said shochtim are members of the Official Orthodox Poultry Slaughterers of America, Inc." and this, the defendants above named deny.

Ninth. Deny each and every allegation contained in the Paragraph designated "(14)" thereof, except insofar as it is therein alleged that Kalman Shapiro was sometime President of the Official Orthodox Poultry Slaughterers of America, Inc., and that Charles Herbert and Joseph Weiner were sometime Delegates of said Official Orthodox Poultry Slaughterers of America, Inc.

Tenth. Deny each and every allegation contained in the Paragraph designated "(22)" thereof, including all the sub-divisions of Paragraph "(22)" designated "(a)" to "(t)" inclusive, thereof.

Eleventh. Deny each and every allegation contained in the Paragraph designated "(24)" thereof, except insofar as it is therein alleged that on or about August 20th, 1928, the Petitioner herein filed an Information against Sixty-[fols. 26 & 27] Eight defendants, many of such defendants defendants herein.

Twelfth. Insofar as Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America and the Official Orthodox Poultry Slaughterers of America, Inc., are referred to in the Paragraph designated "(25)" thereof, they deny each and every allegation contained in said Paragraph "(25)" thereof, except insofar as it is therein alleged that said Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America and said Official Orthodox Poultry Slaughterers of America, Inc., are still in existence.

Thirteenth. Deny that they have any knowledge or information thereof sufficient to form a belief as to the allegations contained in the Paragraph designated "(25)" thereof, respecting the Greater New York Live Poultry Chamber of Commerce.

Fourteenth. Deny each and every allegation contained in the Paragraph designated "(27)" thereof, including all the sub-divisions of Paragraph "(27)" designated "(a)", "(b)", "(d)", "(e)", "(f)", "(i)", "(l)", "(m)" and "(n)", thereof.

Fifteenth. Deny that they have any knowledge or information thereof sufficient to form a belief as to each and every of the allegations contained in the Paragraph designated "(28)" thereof, except insofar as it is therein alleged that they "maintained and continued the existence and operation of the Greater New York Live Poultry Chamber of Commerce" for any purpose whatsoever and this the defendants above named deny.

Sixteenth. Deny each and every allegation contained in the Paragraph designated "(29)" thereof, including all

[fols. 28–38] the sub-divisions of Paragraph "(29)" designated "(a)", "(b)" and "(c)", thereof.

Wherefore the defendants above named pray that the Amended Petition herein be dismissed.

Samuel H. Kaufman, Attorney for Defendants, Office and P. O. Address: 60 Wall Street, Borough of Manhattan, City of New York.

To United States Attorney.

(Verification by all of the above named defendants.)

[fol. 39] In United States District Court

Equity. No. 52/30

[Title omitted]

On motions by the United States, petitioner herein, to strike out as sham certain denials in answers filed by the defendants to a petition in equity brought under the so-called Sherman Act against two categories of persons: (a) sixty-eight defendants who have already been found guilty in a criminal prosecution in this court of the same conspiracy as is set forth in the petition, and (b) thirty-four defendants who either were not parties to the said criminal proceedings or, if parties, were not convicted therein.

In support of the motions:

George Z. Medalie, Esq., U. S. Attorney, Attorney for the United States, by John Lord O'Brian, the Assistant to the Attorney General, and Walter L. Rice, Esq., Special Assistant to the Attorney General, of counsel.

In opposition thereto:

Messrs. Goldstein & Goldstein, attorneys for Greater New York Live Poultry Chamber of Commerce, and seventy other defendants, by Joseph F. Kroppy, Esq., and Jonah J. Goldstein, Esq. of counsel.

[fol. 40] Messrs. Breed, Abbott & Morgan, attorneys for defendant, Ole Salthe, by B. A. Kozicke, Esq. of counsel.

Milton C. Weisman, Esq., attorney and of counsel for Meyer Weiss, a defendant.

Sol. H. Eisler, attorney and of counsel for Arthur Herbert, a defendant.

Samuel H. Kauffman, attorney and of counsel for Local 167 of International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, and 14 other defendants.

OPINION

WOOLSEY, J.:

I grant the motions in so far as they are aimed at answers filed by defendants who were convicted in the criminal prosecution heretofore had in this Court.

I deny the motions in so far as they are aimed at answers filed by defendants who were not parties to the said criminal prosecution, or if parties thereto, were not convicted therein.

I. There has not been any order entered either on Judge Bondy's opinion of August 9, 1930, U. S. A. v. Greater New York Live Poultry Chamber of Commerce et al., 44 F. (2d) 393, 394, nor on my own hitherto unreported opinion herein filed May 5, 1931.

The questions here involved, therefore, are still juridically at large, and with Judge Bondy's consent and approval I am going to deal with them here de novo in my own way as if there had not been any expression of opinion heretofore given either by him or by me thereon.

II. This suit is somewhat unusual in that it is an equity [fol. 41] suit intended to be based on a judgment of conviction in the latter part of 1929 on a criminal prosecution in this Court for a conspiracy in restraint of trade in interstate commerce. This conviction was affirmed. Greater N. Y. Live Poultry Chamber of Commerce v. U. S. A., 47 F. (2d) 156.

One would have supposed that, in a complicated case like this involving so many parties defendant, the United States, in commencing this suit which was brought in April 1930, after the conviction of sixty-eight of the defendants herein named would have annexed the judgment roll in the criminal case to the petition as a schedule thereof, and would have alleged, naming them, that 68 of the defendants here

were found guilty beyond a reasonable doubt in the criminal case of the conspiracy here complained of, and thus would have pleaded the conspiracy as a judicially established fact and relied on it as such for the relief here sought.

For some reason, which even after hearing the arguments, still remains inscrutable to me, the United States has set forth a conspiracy in its petition in the same words as it is printed in the indictment but as if the situation involved what I may appropriately call raw facts about a conspiracy, instead of an adjudicated conspiracy, established by a criminal conviction as against sixty-eight of these defendants.

It is owing to this failure of the Government to avail itself in its pleadings of the advantage which it had [fol. 42] achieved by the conviction of sixty-eight of these defendants after a long and arduous trial before Judge Knox, that its repeated interlocutory motions addressed to the defendants' answers have become necessary in order to clarify the situation as much as may be before trial. I find that the Government is objecting to procedural tactics on the part of the defendants previously convicted, which are the natural, if not the necessary, results of the Government's procedural strategy.

Conspirators differ one from the other in their attitudes and their partnership activities, and it is natural for any conspirator who finds an opportunity to do so, to endeavor to clear himself of some of the more odious of the acts of his associates. So a defendant who may have been convicted of a participation in a conspiracy in which all the acts alleged in the first twenty-three paragraphs of the petition occurred and all the purposes therein alleged were involved, may have himself intended to commit and may have committed only one of those acts and consequently would naturally be averse from admitting the other acts or any implication involved in them. By way of example—a defendant, who might have followed and spied upon poultry dealers, butchers and marketmen, might have been willing only vicariously through his associates to have cut tires, placed bombs in shops or set fire to stores or vehicles.

III. But an advantage lost by a mistake in strategy is sometimes retrieved by successful tactics after contact has been established with the opposing forces. So here, after

[fol. 43] the issues have been joined, the Government is able—because the criminal prosecution was in this Court—to fall back on the doctrine of judicial notice to support its motions and save its situation. The ineptness of the Government's procedural strategy, therefore, does not preclude me from giving it the relief which it seeks, so far as the sixty-eight defendants who were convicted in the criminal proceeding are concerned. For the whole judgment roll in the criminal case is on file in this Court as part of its records and, consequently, though not pleaded, is subject to my judicial notice. United States v. California Canneries, 279 U. S. 553, 555; Aspen Mining & Smelting Co. v. Billings, 150 U. S. 31, 38; Butler v. Eaton, 141 U. S. 240, 243, 244; French v. Senate of State of California, 146 California 604, 607, 80 Pac. Rep. 1031, 1033. And cf. Martin v. Kennecott Copper Corporation, 252 Fed. 207 (W. D. of Washington); Hubbard v. Loew, Collector, 226 Fed. 135, 139.

Examination of this judgment roll shows that any denials by the defendants in this suit who were convicted in the criminal action of the first twenty-three paragraphs of the petition or of any one of those paragraphs, or of any of the allegations therein contained, are sham denials made for obstructive purposes only, and therefore should be stricken out.

IV. On the other hand, when I turn to the defendants herein named against whom the estoppel of the criminal judgment does not obtain for the reason that they were [fol. 44] not parties to the criminal action or were not convicted therein, the situation is wholly different.

In the case of such defendants both parties are necessarily at large and there is not, as appears to be argued by the Government, even a partial estoppel against any of them, if such a thing can be conceived. Each of such defendants is entitled to his day in court on all of the issues which he has seen fit to raise. Consequently, of course, he has a perfect right to challenge the existence of the conspiracy alleged in the petition and is not limited as the Government would like to limit him, to an issue as to whether he participated in the conspiracy already judicially established inter alias.

So long as a defendant follows the required form in making a denial and the denial cannot be stricken out on

the ground that it is sham, a court is not at liberty, even in order to save time at the trial by simplifying or clarifying the situation, to change the pattern of the issues which a defendant has determined to raise. The Nesco-United States v. St. Paul Fire & Marine Ins. Co., 47 F. (2d) 643, 647.

V. Orders hereon may be settled on two days' notice and, as the rule requires, should be submitted, in the first instance to the Clerk of this Court.

October 26, 1931.

Woolsey, United States District Judge.

[fol. 45] In United States District Court

Equity. No. 52-30

[Title omitted]

Order Striking Portions of Answer

It appearing from the records on file in the office of the Clerk of this Court that indictment No. C 61-824 was returned and filed with the Clerk on January 17, 1929, charging that defendants herein, that is to say:

Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America,
Carl Firestone,
Charles Gershowitz,
Abe Newman,
Official Orthodox Poultry Slaughterers of America,
Harry Schomer,
Charles Herbert,
David Kaufman (alias "David Silver"),
Max Keslin,
Aaron Weissler,
Harry Herbert

together with 79 other defendants engaged in a conspiracy to restrain interstate trade and commerce in the live poultry industry in the Southern District of New York and vicinity in violation of the Act of July 2, 1890, (26 Stat. 209), [fol. 46] commonly known as the Sherman Antitrust Act; and that a verdict of guilty was rendered against all of

the above named defendants on November 21, 1929, after trial before the Honorable John C. Knox and a jury; and that the above named defendants were sentenced by this Court December 16-18, 1929, to serve jail terms in the Federal Detention Headquarters; to pay fines in varying amounts, and to be placed on probation for a period of five years; and

That a Petition was filed against the above named defendants and others on February 7, 1930, and an Amended Petition was filed against said defendants and others on April 16, 1930; and that said Amended Petition in the first 23 paragraphs thereof describes the identical conspiracy described in the first 23 paragraphs of indictment No. C 61-824, of which said defendants have been adjudicated guilty by the judgment of this Court; and

That said defendants filed an Answer on or about April 26, 1930, denying many of the allegations contained in the first 23 paragraphs of said Amended Petition.

Now, therefore, this cause having duly come on for argument before the Honorable John M. Woolsey, on motion of the United States Attorney for the Southern District of New York, and John Lord O'Brian, The Assistant to the Attorney General, and Walter L. Rice, Special Assistant to the Attorney General, it is

Ordered that paragraphs "First," "Second," "Third," "Fourth," "Sixth," "Seventh," "Eighth," "Ninth," "Tenth," and so much of paragraph "Fifth" of defendants' Answer as denies the allegations contained in paragraphs (5), (6), (16), (17), (18), (19), (20), (21), and (23) of said Amended Petition, be stricken from the said Answer and from the records in this case.

Dated New York, October 30, 1931.

Woolsey, United States District Judge.

[fol. 47] IN UNITED STATES DISTRICT COURT

In Equity. 52-30

[Title omitted]

NOTICE OF MOTION TO STRIKE

SIR: Please take notice that upon the petition herein and the answer of defendants,

Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America,
Carl Firestone,
Charles Gershowitz,
Morris Markman (alias "Nigger"),
Abe Newman,
Official Orthodox Poultry Slaughterers of America,
Harry Schomer,
Charles Herbert,
David Kaufman (alias "David Silver"),
Max Keslin,
Aaron Weissler,
Joseph Rosenman (Secretary of the Official Orthodox Poultry Slaughterers of America, Inc.),
Harry Herbert,
Samuel Silverman, and
Joseph Weiner,

and upon the indictment and judgment in the criminal case C 61-824, entitled United States of America v. Greater New York Live Poultry Chamber of Commerce, et al., copies of which are attached to this notice of motion,

The petitioner herein will move this Court on the 9th day of May, 1930, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard at the United [fols. 48-73] States District Court, Southern District of New York, Room 235, in the Old Post Office Building, Broadway and Park Row, in the Borough of Manhattan, City of New York, State of New York, for an order striking from the said answer all of the matters contained in paragraphs "First" to "Tenth", inclusive, on the ground that all of the material facts therein referred to have been finally adjudicated against said defendants by the said judgment of this Court in the aforesaid criminal prosecution and that said paragraphs of said answer are therefore sham, redundant and impertinant; and for such other and further relief as in the premises may seem just and proper.

Charles H. Tuttle, W. L. R., United States Attorney for the Southern District of New York.

To Samuel H. Kaufman, Attorney for Defendants.

Dated New York, April 30, 1930.

(Copy of indictment returned on Jan. 17, 1929, was attached hereto as part of moving papers which is omitted by stipulation because same allegations are contained in Amended Petition.)

[fol. 74] IN UNITED STATES DISTRICT COURT

Equity. 52-30

[Title omitted]

RECORD OF CONVICTIONS

Indictment No. C 61-824 was filed with the Clerk of the District Court for the Southern District of New York January 17, 1929. On January 28, 1929 defendants Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Laborers of America, Carl Firestone, Charles Gershowitz, Abe Newman, Official Orthodox Poultry Slaughterers of America, Harry Schomer, Charles Herbert, David Kaufman (alias "David Silver"), Max Keslin, Aaron Weissler, and Harry Herbert plead not guilty and bail was fixed for each of the individual defendants. Trial commenced on October 7, 1929, and a verdict of guilty was rendered against all of said defendants November 21, 1929. Defendants were sentenced December 16-18, 1929 as follows:

Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Laborers of America: Sentence suspended and defendant placed on probation for five years.

[fol. 75] Carl Firestone: $500 and 00/100 fine suspended; sentenced to four weeks in the Federal Detention Headquarters; placed on probation five years.

Charles Gershowitz: Suspended sentence; placed on probation five years.

Abe Newman: Suspended sentence; placed on probation five years.

Official Orthodox Poultry Slaughterers of America: Sentence suspended; placed on probation for five years.

Harry Schomer: Fine suspended; sentenced to four weeks in the Federal Detention Headquarters; placed on probation for five years.

Charles Herbert: $500 and 00/100 fine suspended; sentenced to two weeks in the Federal Detention Headquarters; placed on probation for five years.

David Kaufman (alias "David Silver"): $500 and 00/100 fine suspended; sentenced to eight weeks in the Federal Detention Headquarters; directed to pay $50 and 00/100 to Morris Teitler; placed on probation for five years.

Max Keslin: $500 and 00/100 fine suspended; sentenced to ten days in Federal Detention Headquarters; placed on probation for five years.

Aaron Weissler: $500 and 00/100 fine suspended; sentenced to four weeks in Federal Detention Headquarters; placed on probation for five years.

Harry Herbert: Suspended sentence; placed on probation for five years.

The Clerk of the District Court for the Southern District of New York certifies that the above is a correct tran-
[fol. 76] script of his records showing the indictment, pleas, trial, verdict and sentence of the defendants herein named.

Alex Gilchrist, Jr., Clerk of Court, Southern District of New York.

Dated April 8, 1930.

[fol. 77] [Endorsed:] Motion to Strike Answer. To Samuel H. Kaufman, Esq., 60 Wall St. Copy received this 1st day of May, 1930. S. H. Kaufman, Atty. for Def.

[fol. 78] In United States District Court, Southern District of New York

Equity. No. 52-30

[Title omitted]

Findings of Fact and Conclusions of Law

Findings of Facts

Upon the evidence presented in this cause, the Court finds that:

1. The Greater New York Live Poultry Chamber of Commerce, hereinafter referred to as the Chamber of Commerce, is an association of poultry marketmen doing business in the Metropolitan Area, comprising the City of New York and those portions of the States of New York and New Jersey situated within thirty miles of the boundaries of the City of New York.

2. Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, hereinafter referred to as Teamsters' Union, is a labor union comprising workmen engaged in handling, crating, and loading live poultry at West Washington Market and the New York Central Railroad Terminal, and trucking such poultry from the railroad terminals and West Washington Market to the various poultry markets of the Metropolitan Area. Defendants Arthur Herbert and Harry Schomer are delegates, and David Kaufman is business representative of the Teamsters' Union.

3. The Official Orthodox Poultry Slaughterers of America, Inc., hereinafter referred to as Shochtim Union, is a corporation comprising slaughterers of poultry who are [fol. 79] qualified to slaughter poultry in accordance with Jewish Dietary laws. A person competent under said Jewish Dietary laws to slaughter poultry is known to the trade as a shochet (plural, shochtim). The poultry is slaughtered by the said shochtim in the employ of the marketmen. Defendants Charles Herbert and Joseph Weiner are delegates of the Shochtim Union.

4. Defendants Barney Azwolinsky; Morris Azwolinsky; Al Berman; Herman Berman; Charles Bistretsky; Abraham Bloom; Isidore Bloom; Morris Bloom; Isidore Blumenfeld; Morris Brown (of the Irving Poultry Co.); Morris Chast; Morris Damsky; Harry Dworkin; Ida Frank; Isidore Frank; Hyman Frankfater; Jacob Frankfater; Abraham Franzel; Samuel Friedman; Morris Frisman; Morris Gerber; Max Glantz; Max Gold; Samuel Gold; Abraham Goldberg (of the Pitt St. Live Poultry Market); Samuel Goldstein; Isidore Gordon (of the F. G. T. Live Poultry Market); Morris Gordon; Isaac Greenstein (of the Tremont Live Poultry Market); Kalman Gross; Hyman Haber; Isidore Haber; Abraham Harrison; Samuel Harrison; Morris Hellman; Harry Herbert, Dave Hirshon; L. Hornstein (of

Hornstein & Spatz); Samuel Isaacson; Morris Joselson; Samuel Kadin; Isaac Kaplan (of the Prospect Poultry Co.); Leo Kassoff; Morris Klieger; Jacob Koslow; Alter Kupersmith (of K. Gross, Inc.); Simon Lapof; Goodman Levy; Isaac Lipschitz; Samuel Mamber; Joseph Manne; Samuel Manne; Joe Mines; Jacob Mintz; Charles Mirotznik; Hyman Nierenberg; Abraham Pepper; Hyman Raby; Jacob Reisner; Max Rosen; Harry Rubin; Samuel Sahn; Ole Salthe (of the Dexter Poultry Co., Inc.); Louis Schiller; Joseph Scull; William Simon; Paul Sosnik; Sidney Sosnik; Louis Spatz; Aaron Steinberg (of the Monroe Poultry Co.); Jacob Turkowitz (of the F. G. T. Live Poultry Market); Louis Weidberg; Max Wolas; Abraham Wolfe; Irving Yarmouth (associated in business with Kalman Gross), were at some time prior to the filing of the petition herein members of the Chamber of Commerce, and engaged in business as marketmen. Each of said defendants participated in the conspiracy alleged in the Amended Petition.

[fol. 80] 5. At least 98% of the poultry sold in New York is shipped from outside the State by shippers to commissionmen, hereinafter called receivers. From 80% to 90% of the poultry is shipped by freight and the remainder is shipped by express. Such poultry arrives at five railroad terminals. About 50% arrives at the New York Central Terminal at 60th Street, Manhattan; the remainder comes in at the terminals of Erie, Lackawanna, Central Railroad of New Jersey, and Pennsylvania, all located in New Jersey. Immediately after the poultry is inspected at the terminal, it is unloaded and put into coops, and when not sold and delivered at the terminal is carted to West Washington Market in New York City. From 60% to 80% of the poultry is sold directly from the freight cars at the terminals. About 50% is ordered subject to inspection either while the cars are in transit or before the poultry is taken out of the cars. The rest of the poultry is trucked from the railroad terminals to West Washington Market, at the expense of the shipper and is either transferred from the trucking company's truck to that of the buyer or is unloaded at the receiver's stand and is sold from there, according to convenience. The poultry, a perishable commodity, is moved as rapidly as possible, most of it being sold on the day of unloading. The receiver sells the poultry and remits never less but some times more than the price which he obtains

from the marketmen, which price is called the "market quotation". He usually remits the market price for the day, after deducting charges for freight, coops, food, unloading, cartage to West Washington Market, and 3, 4, or 5% commission. Because of competitive conditions, the commission men have been making their return on the basis not of what they receive, but of the highest market price for the day. By the custom of the trade and because of competitive requirements, the return is made as of the day of unloading. The receiver is obligated at all times to carry out the instructions of the shipper as to the time of unloading and as to the price. The shipper is entitled to [fol. 81] speculate on the price until he gives the receiver orders to sell. As a commissionman he acts as a bank and collection agency for the shipper and keeps him fully advised of market conditions.

The poultry is sold in coops by the commissionmen to the marketmen. The defendant marketmen handled at least 55% to 60% of the poultry sold in West Washington Market. They cause it to be loaded on trucks either at the railroad terminals or at West Washington Market, and take it to their places of business where they cause the poultry to be slaughtered, sold, and delivered to butchers and poultry dealers.

6. Defendants Max Keslin, Morris Markman (alias "Nigger"), Julius Rosenstein, Murray Rosenstein, Sidney Rosenstein, Aaron Weissler, Meyer Weis, Charles Gershowitz, Abe Newman, Carl Firestone, Jacob (Joe) Mast, Michael Lax, Sam Lipkin, John J. Conlin and Hyman Fishman were employed by the Chamber of Commerce and by defendant marketmen and union delegates to enforce the agreement to allocate customers in the several districts.

7. In May or June, 1927, about one week after Benjamin Simon was appointed Supervisor of the Chamber of Commerce, he called a meeting of the Board of Directors of the Chamber of Commerce, comprising representatives from each of the following districts of the Metropolitan Area: Bronx, Harlem, East Side, Williamsburg, Brownsville, Borough Park, and Coney Island. He told the directors that he wanted $5,000 per week, and suggested that it be collected in the form of a levy of 1¢ per pound on all poultry sold by marketmen in the respective districts. Exhibit 9 was prepared by defendant Albert Winkel, at that time

president of the Chamber of Commerce, and it was agreed by the directors and Benjamin Simon that collections were to be made in accordance with the following percentage from marketmen of

Bronx	21½%
Harlem	10 %
East Side	16½%
Brooklyn	16 %
[fol. 82] Brownsville	17½%
Borough Park	18½%

On the basis of this agreement the various districts were to contribute the following amounts, as their respective shares of $5,000 per week to be paid to Benjamin Simon:

Bronx	$1,075
Harlem	500
East Side	825
Brooklyn	800
Brownsville	875
Borough Park	925

8. It was agreed and understood by defendants that the money collected was to be used: (a) to pay small marketmen and poultry dealers weekly sums in return for their promise to refrain from engaging in a wholesale business, that is, selling poultry to butchers and dealers; (b) to maintain and enforce a system of allocating customers (retail dealers and butchers) among the various marketmen, by hiring men to spy upon, report, threaten, and obstruct marketmen, retail dealers, and butchers who did not abide by the allocation agreement; (c) to prevent retail dealers and butchers from purchasing at sources other than the markets to whom they were allocated, by hiring men to spy upon and obstruct such dealers and butchers and by paying money to marketmen in return for their promises to refuse to sell to dealers and butchers; (d) to prevent marketmen from selling to retail dealers and butchers not allocated to them; (e) to prevent recalcitrant marketmen, poultry dealers, or butchers from obtaining poultry in West Washington Market, at the railroad terminals in New York and New Jersey, or at any sources whatever, either within or without the State of New York; and (f) to bribe public officials charged with the enforcement of antitrust laws.

9. The following defendants, who for the most part were directors of the Chamber of Commerce, were appointed by Benjamin Simon as collectors for the respective districts, and functioned in that capacity:

Bronx	Louis Spatz, Max Rosen.
Harlem	Louis Cohen, William Simon.
East Side	Louis Weidberg, Charles Mirotznik.
Williamsburg	Samuel Sahn, Sam Mamber.
Coney Island and Borough Park	Sam Gold.
Brownsville	David Hirshon, Morris Gordon.

[fol. 83] 10. The collectors called meetings of marketmen in their respective districts. At these meetings marketmen were told that they would have to contribute 1¢ per pound on all the poultry they sold. The marketmen allocated the poultry dealers and butchers among themselves and agreed not to sell to customers not allocated to them. A committee was appointed to arbitrate disputes arising whenever a particular customer was claimed by several marketmen. For the purpose of settling disputes as to the customers claimed by more than one marketman in Brownsville, it was agreed that the marketmen who sold the most poultry to a particular customer in the last week of June, 1927, should be entitled to that customer. Objecting marketmen were ordered from the meeting. It was agreed that the money collected was to be used to hire men to run the organization, and to bribe public officials.

11. Marketmen were told to advance their prices, and were occasionally told by leaders of the respective districts what price to charge. The prices were advanced materially from June, 1927 until August, 1928. Whereas marketmen had charged 3¢ and 4¢ per pound above the prices which they paid to receivers before June, 1927, they thereafter concertedly charged 6¢, 8¢, 10¢ and as much as 15¢ and 18¢ above the prices which they paid to receivers.

12. The original weekly collections in 1927 aggregated thousands of dollars. In Brownsville alone they amounted to about $8,000.00. On the East Side the collections aggregated $2,100 to $3,200 per week, of which $1,030 per week was paid to Benjamin Simon. The collections in the Bronx aggregated $2,000 to $2,500 per week, of which $900 or

$1,000 per week was paid to Benjamin Simon. The collectors in other districts made collections from marketmen, and paid a portion of the amount collected to Benjamin Simon.

13. The collections aggregated approximately $1,000,000 per year, and continued for more than one year, commencing in June, 1927 and lasting until at least August 20, 1928, when a criminal information was filed against 64 individ- [fol. 84] uals; 4 associations, and one corporation, 52 of whom are defendants in the present case. The sums collected in the several districts were several times as large as the amount paid to Benjamin Simon. Large sums of the fund collected were used to buy the competition of small marketmen and poultry dealers, who agreed not to sell to retail poultry dealers and butchers. Such payments to small marketmen ranged from $50 to $250 per week. Substantially all of defendant marketmen were either paying money to the collectors or receiving payments from them. The payments to marketmen aggregated many thousands of dollars per week.

14. Marketmen were told by leaders of the several districts that if they did not pay the 1¢ per pound, they would be prevented from obtaining poultry from the railroad terminals and West Washington Market.

15. The plan to allocate customers, collect 1¢ per pound, raise prices, and prevent recalcitrant marketmen, poultry dealers, and butchers from obtaining poultry from West Washington Market, the railroad terminals and other points outside the City of New York was carried out by defendants.

16. A complete system of supervision which included spying upon marketmen, dealers, and butchers to ascertain the source of their poultry, threats of violence, sabotage, and malicious destruction of property was instituted.

17. Marketmen who refused to abide by the system of allocation or to pay the 1¢ per pound, were obstructed in their attempt to purchase poultry at the railroad terminals in New Jersey, at the New York Central Terminal, and at West Washington Market. Members of the Teamsters' Union and of the Shochtim Union, in compliance with instructions from defendant marketmen and

delegates, refused to load, unload, handle or slaughter poultry for recalcitrant marketmen, and by violence, threats of violence, and sabotage, prevented such marketmen from purchasing poultry both within or without the State of New York. To carry — including Bronx, Harlem, East Side, [fol. 85] Brooklyn, Brownsville, and Borough Park, contributed at least $75 per week to the officers of the Shochtim Union. The East Side paid from $105 to $355 per week to its officers, in return for which they supplied shochtim without cost on Thursdays and Fridays to some of the East Side marketmen, in addition to cooperating with the plans of the conspiracy.

19. Officers and delegates of the Teamsters' Union and the Shochtim Union caused the members of said unions to refuse to load, handle or slaughter poultry for recalcitrant marketmen, either in their markets, at West Washington Market, or at the railroad terminals.

20. Retailers who insisted on selling at wholesale in violation of the allocation plan, were required by the delegates of the Teamsters' Union and the Shochtim Union to hire more union men than their business warranted. On some occasions marketmen who refused to abide by the conspiracy were required to take union men who were instructed to do as much damage and as little work as possible.

21. When the success of the conspiracy was threatened by importations of poultry from Philadelphia and other distant cities, marketmen and drivers of interstate truck loads were threatened by defendant union delegates and marketmen with violence unless they discontinued. The president of the Chamber of Commerce accompanied a delegate of the Chauffeurs' Union to Philadelphia and ordered a poultry commissionman there not to ship poultry to New York marketmen without the Union's consent.

22. When retail dealers, driven by extortionate prices charged them, attempted to buy in New Jersey, they were followed and spied upon by defendants employed for that purpose, and in some instances forcibly brought back to the marketmen to whom they had been allocated. New Jersey marketmen who persisted in selling them were cut off from

their supplies of poultry in West Washington Market, New York.

23. In carrying out the plans of the conspiracy the following defendants were employed in the capacities herein designated:

(a) Max Keslin, a member of the Teamsters' Union, notified the various loaders and other members of the Teamsters' Union employed by the receivers in West Wash- [fol. 86] ington Market that various marketmen were on the blacklist, and ordered them not to load poultry for such marketmen.

(b) Morris Markman (alias "Nigger") prevented blacklisted marketmen from obtaining poultry at the New York Central Railroad Terminal located at 60th Street, Manhattan.

(c) Julius Rosenstein, Murray Rosenstein, Sidney Rosenstein, Aaron Weissler, Meyer Weiss, Charles Gershowitz, Abe Newman and Carl Firestone employed threats and violence to compel adherence to the allocation agreement, followed and spied upon poultry dealers, butchers, or marketmen who were buying or selling otherwise than in accordance with the allocation plan.

(d) Jacob (Joe) Mast accompanied collectors in the Bronx and Harlem, inspected the books of marketmen to ascertain the volume of their weekly sales for the purpose of reporting the same to the collectors, and instructed marketmen of the prices to charge for their poultry.

(e) Michael Lax and Sam Lipkin made collections of 1¢ a pound from marketmen in Brownsville.

(f) John J. Conlin, delegate of Local 560 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a New Jersey Local affiliated with Local 167, made collections of 1¢ a pound from marketmen in New Jersey, and prevented New York marketmen from obtaining poultry in New Jersey.

(g) Hyman Fishman was employed by the Chamber of Commerce to prevent recalcitrant marketmen from obtaining poultry.

[fol. 87] 24. On August 20, 1928, an information, charging substantially the same offense as is charged in the original and amended petition herein, was filed against 69 defendants, 52 of whom are defendants in the present case. On January 17, 1929, an indictment was returned by the Grand Jury for the Southern District of New York charging 90 defendants, including 65 of the present defendants with substantially the identical conspiracy charged in the original and amended petition herein.

25. On December 16, 17 and 18, 1929, this Court, pursuant to a jury verdict of guilty against 66 defendants and pleas of guilty on the part of three defendants, sentenced 69 defendants, of whom the following 65 are defendants in the case at bar and have participated in the conspiracy alleged in the amended petition:

Morris Aswolinsky,
Herman Berman,
Charles Bistretsky,
Morris Chast,
Morris Damsky,
Carl Firestone,
Isidore Frank,
Jacob Frankfater,
Morris Gerber,
Charles Gershowitz,
Samuel Gold,
Morris Gordon,
Greater New York Live Poultry Chamber of Commerce,
Kalman Cross,
Hyman Haber,
Isidore Haber,
Samuel Harrison,
Morris Hellman,
Arthur Herbert,
Charles Herbert,
Harry Herbert,
Dave Hirshon,
Samuel Isaacson,
Morris Joselson,
Samuel Kadin,
Isaac Kaplan (of the Prospect Poultry Company),
Leo Kassoff,
David Kaufman,
(alias "David Silver")
Max Keslin,
Morris Klieger,
Jacob Koslow,
Simon Lapof,
Michael Lax,
Samuel Lipkin,
Isaac Lipschitz,
Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America,
Samuel Mamber,
Joseph Manne,
Samuel Manne,
Charles Mirotznik,
Abe Newman,
Nyman Nierenberg,
Official Orthodox Poultry Slaughterers of America, Inc.,
Abraham Pepper,
Hyman Raby,

[fol. 88]

Jacob Reisner,
Max Rosen,
Julius Rosenstein,
Murray Rosenstein,
Sidney Rosenstein,
Samuel Sahn,
Louis Schiller,
Harry Schomer,
Joseph Scull,
William Simon,
Paul Sosnik,
Sidney Sosnik,
Louis Spatz,
Aaron Steinberg (of the Monroe Poultry Company),
Louis Weidberg,
Aaron Weissler (alias "Arke"),
Max Wolas,
Abraham Wolfe, and
Irving Yarmouth.

26. The Chamber of Commerce, the Teamsters' Union and the Shochtim Union have all continued in existence up to the time of the filing of the amended petition, April 16, 1930, and thereafter.

27. The conspiracy described in the amended petition continued in existence up to the time of filing the amended petition April 16, 1930, and for at least eleven months thereafter.

28. In June, 1929, the defendant marketmen of the East Side organized the L. W. Credit Association for the purpose of restricting competitive sales, allocating poultry dealers and butchers among them, raising prices, and restraining free competition in the sale of live poultry. So-called "watchers" or "chargers" were placed by the L. W. Credit Association in the several markets of the East Side district. Said "watchers", in pursuance of the plan to allocate customers and advance prices recorded the weight of the poultry sold by the marketmen to each poultry dealer and butchers, and transmitted said reports to the L. W. [fol. 89] Credit Association. The several marketmen of the East Side were allotted a specific quota of sales per week. For every pound of poultry sold in excess of the quota each marketman was required to pay 4¢ a pound to the L. W. Credit Association; for each pound under his quota for a particular week, each marketman was entitled to receive 4¢ a pound from the L. W. Credit Association. For the purpose of coercing adherence to the L. W. Credit Association, delegates of the Teamsters' Union required one marketman to hire additional union employees, until he

had "straightened out" with the Association. An East Side poultry dealer was prevented by an officer of the L. W. Credit Association from purchasing poultry in Brooklyn. The L. W. Credit Association continued in existence until a few weeks before the commencement of the criminal trial under indictment No. C. 61-824, in October, 1929.

29. In February, March, April, and May, 1930, Aaron Steinberg was prevented by defendants from purchasing and obtaining delivery of poultry from marketmen in New York, from receivers in West Washington Market, from receivers at the New York Central Terminal, and New Jersey Terminals, from Philadelphia, from Elizabeth, N. J., and from Lincoln, Nebr. Delegates of the Teamsters' Union and of the Shochtim Union attempted to coerce Steinberg to employ more union men than his business warranted and prevented others from selling and delivering poultry to Steinberg in interstate commerce. As part of their plan to prevent Steinberg from obtaining poultry in interstate commerce, defendants threatened and assaulted Steinberg's employees, caused the destruction of his poultry truck, and prevented the National Box Company of Newark, N. J. from delivering empty coops for the transportation of poultry in interstate commerce to Steinberg's market. Defendant marketmen cooperated with the delegates of the Teamsters' Union and the Shochtim Union to prevent Steinberg from obtaining poultry. The activities of defendants with relation to Aaron Steinberg in February, March, April and May of 1930 constituted a continuance of the conspiracy described in the amended petition and a [fol. 90] threat of future violations of the Sherman Anti-trust Act on the part of defendants.

30. Barney Hecht was prevented by defendants from obtaining poultry from receivers in West Washington Market in July, 1930. He was prevented by defendants from obtaining poultry at the New York Central Terminal in March, 1929, and in Newark, N. J., in March, 1929.

31. In March, 1931, marketmen in Passaic, N. J. were prevented from obtaining poultry from receivers in Newark, N. J. because they had sold at prices approximately 4¢ above the price paid to receivers, whereas competing marketmen were charging 10¢ or 12¢ above the price

charged by the receivers; and were warned by defendant Max Keslin in March, 1931, that they would be unable to obtain poultry in West Washington Market if they sold to a designated person.

32. Alexander Pearlman and Abraham Pearlman, marketmen, were prevented by defendants from obtaining poultry at the New York Central Terminal and at West Washington Market in December, 1929.

33. Marketmen were required in 1931 by delegates of the Teamsters' Union and of the Shochtim Union to employ more workmen than their business warranted. Members of the Teamsters' Union and of the Shochtim Union forbade marketmen to sell wholesale.

34. Defendant Joseph Rosenman threatend Benjamin Rothschild with physical violence about a week after the conclusion of the criminal trial C 61-824, for having testified against him at said criminal trial.

35. From September 19, 1931 to some time in November, 1931, when publicity was given to the fact that an injunction suit against defendants would commence on November 16, 1931, butchers in Coney Island, Borough Park, Bensonhurst, Bronx, and Harlem were concertedly charged by marketmen in said districts prices in excess of the prices which had been charged prior to September 19, 1931. Prior to said date butchers paid marketmen 3, 4, and 5¢ above the prices which the marketmen paid to the receivers. After September 19, 1931, butchers were charged 8 to 12¢ above the prices paid by marketmen to receivers. During [fol. 91] said period of time marketmen in said districts refused to sell butchers who had been dealing with other marketmen. In at least one instance defendant marketmen agreed upon high prices to be charged on the succeeding day. During said period of time marketmen in said districts frequently told butchers that they could not sell them because of a combination or agreement among the marketmen. Marketmen with whom butchers had been regularly dealing, frequently told the butchers that if they bought elsewhere, the profits would revert back to the regular marketman.

36. Defendants sold only reluctantly to butchers who had not been dealing with them regularly, and admitted that

they would be given trouble by the labor unions and by other marketmen if they were discovered selling to such butchers. Members of the labor unions interfered with such sales to butchers. Marketmen in said districts were accused by butchers of overcharging, and in repeated instances gave rebates of 1, 2, and 3¢ a pound to partially offset the high prices charged.

37. In August, 1931, the Live Poultry Slaughter House Association, comprising most of the poultry marketmen of the Metropolitan Area, was formed to succeed the Live Poultry Protective Dealers Association, which comprised a great number of retail marketmen and a smaller number of wholesale marketmen. The Live Poultry Slaughter House Association realizes an income from the same source as the Chamber of Commerce, namely, the assignment of 10¢ on each empty coop returned by marketmen to Bernstein & Sons and the New Jersey Coop Company, which corporations supply coops for the trucking of poultry from the railroad terminals to the various markets in the Metropolitan Area. Some of defendant marketmen who are members of the Live Poultry Slaughter House Association have manifested a disposition to use the Associjation as an instrumentality for continuing the conspiracy described in the amended petition.

[fol. 92] 38. The Harlem and Bronx Live Poultry Board of Trade, organized in the fall of 1931, comprised most of the marketmen doing business in Harlem and Bronx. The members agreed not to sell on credit to poultry dealers and butchers who did not produce receipted bills showing full payment to marketmen with whom said poultry dealers and butchers had last dealt. By the custom of the trade poultry dealers and butchers pay their bills only once each week, paying on Monday morning for all poultry bought during the previous week. Poultry dealers and butchers, under the restrictions imposed by the Harlem and Bronx Live Poultry Board of Trade, were not to be permitted to change marketmen during the middle of the week unless they paid cash or produced a receipted bill showing full payment to the marketmen with whom they had last dealt. After the formation of the Harlem and Bronx Live Poultry Board of Trade, the marketmen of the Bronx charged prices in excess of those charged before the formation of

said association. One marketman was prevented from obtaining poultry in West Washington Market because he resigned from the Harlem and Bronx Live Poultry Board of Trade.

39. At the time of the filing of the original petition, February 7, 1930; at the time of filing of the amended petition, April 16, 1930; and up to the time of the trial of this case, there has been a continuous and dangerous probability of resumption of all of the acts, purposes, means, and methods described in the amended petition.

40. The presumption of continuance of the conspiracy and of the participation of the various defendants therein has not been rebutted.

41. Each of the allegations in the amended petition has been proved by the Government, except that it has not been proved that the defendants Jacob Damsky and Sam Silverman participated in the conspiracy therein alleged.

[fol. 93] CONCLUSIONS OF LAW

(1) This Court has jurisdiction over the cause herein and over each of the defendants.

(2) Poultry shipped into New York City remains in interstate commerce until sold and delivered by receivers to marketmen.

(3) All of the defendants herein, except Jacob Damsky and Sam Silverman, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209), commonly known as the Sherman Antitrust Act, entered into and engaged in a conspiracy to restrain and monopolize, attempted to monopolize, and did restrain and monopolize the interstate trade and commerce in live poultry in the Southern District of New York, in the Metropolitan Area, and among the several States from which poultry is shipped into New York City. In pursuance of said conspiracy, said defendants and others restrained and monopolized the intrastate trade and commerce in live and freshly slaughtered poultry, in the Metropolitan Area, by the means and methods described in the amended petition.

88 * * (Caption) * *

Know All Men By These Presents, That John Factor, of the County of Cook, State of Illinois, as principal, is held and firmly bounden unto H. C. W. Laubenheimer, United States Marshal for the Northern District of Illinois, Eastern Division, and unto the United States of America, in the full and just sum of Fifty Thousand Dollars ($50,000.00) to be paid unto the said H. C. W. Laubenheimer, United States Marshal for the Northern District of Illinois, Eastern Division, and/or the United States of America, to which payment well and truly I bind myself, my heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 11th day of February in the year of our Lord, One Thousand Nine Hundred and Thirty-two.

Whereas, lately, on the 11th day of February, 1932, at the February Term of the United States District Court for the Northern District of Illinois, Eastern Division, in a cause pending in said court between the United States of America ex rel, John Factor, vs. H. C. W. Laubenheimer, United
89 States Marshal for the Northern District of Illinois, Eastern Division, an order of the United States District Court for the Northern District of Illinois, Eastern Division, was entered on habeas corpus discharging John Factor of and from the custody of the said United States Marshal upon the said John Factor entering into recognizance in the principal sum of Fifty Thousand Dollars ($50,000.00) with good and sufficient surety to be approved by the court conditioned upon his personally appearing before the United States Circuit Court of Appeals for the Seventh Circuit on an appeal in said cause to answer, abide and obey all the judgments and all orders made by the United States Circuit Court of Appeals for the Seventh Circuit in said cause, and upon his personally appearing before the Supreme Court of the United States in event of certiorari in said cause to answer, abide and obey all the judgments and all orders made by the Supreme Court of the United States in said cause.

Now the Condition of Said Obligation is such, That if he, the said John Factor, shall appear in person before the United States Circuit Court of Appeals for the Seventh Circuit in an appeal of said cause to answer, and shall abide and obey all the judgments and all orders made by the United

States Circuit Court of Appeals for the Seventh Circuit in any appeal of said cause, and shall personally appear before the Supreme Court of the United States in the event of certiorari in said cause to answer, and shall abide and obey the judgment and all orders made by the Supreme Court of the United States, then this obligation is to be void, otherwise to remain in full force, virtue and effect. $50,000 Liberty Bonds deposited with the Clerk February 11, 1932 for the faithful performance of this bond and made a part hereof.

JOHN FACTOR (Seal)

90 Signed and acknowledged to and before me this 11th day of February, 1932.

CHARLES M. BATES
Clerk.

Approved by:
CARPENTER
United States District Judge.

11 Feb. 1932.

O. K.
L. MOODY
Atty for U. S.

91 And afterwards, to wit, on the 11th day of February 1932 being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable George A. Carpenter District Judge, appears the following entry, to wit: Entered 1932.

92 • • (Caption) • •

Thursday, February 11, 1932.

Present: Honorable George A. Carpenter, Judge of said Court.

This day comes the Relator by his attorney and presents herein his bond in the penal sum of Fifty Thousand ($50,000.00) Dollars which bond is approved and signed by the Court and ordered by the Court to be filed by the Clerk of this Court.

tions. 116 * * (Caption) * *

BILL OF EXCEPTIONS.

Be it remembered that heretofore, to-wit, on the 20th day of January, A. D. 1932, the above entitled cause came on to be heard at Chicago, Illinois by the District Court of the United States, for the Northern District of Illinois, Eastern Division, upon the issues joined therein, His Honor George A. Carpenter, Judge Presiding, without a jury.

Whereupon, it appearing to the Court that writs of habeas corpus and certiorari having duly issued out of said District Court of the United States for the Northern District of Illinois, Eastern Division, on January 12th, A. D. 1932, said writs having been ordered issued by the Honorable Charles E. Woodward, Judge Presiding; that H. C. W. Laubenheimer, United States Marshal for the Northern District of Illinois, Eastern Division having filed his return to the District Court of the United States for the Northern District of Illinois, Eastern Division, to the said writ of habeas
117 corpus; and that Edwin K. Walker, United States Commissioner in and for the Northern District of Illinois, Eastern Division, having made and filed his return to the writ of certiorari to the District Court of the United States for the Northern District of Illinois, Eastern Division; and it further appearing that traverses to each of said returns were duly filed, this cause came on to be heard upon said petitions, returns and traverses.

And thereupon counsel for the relator presented to the Court a printed abstract of the said return of United States Commissioner Edwin K. Walker consisting of a true abstract of the depositions and documents of the demanding government and of the testimony of witnesses produced by John Factor, and all orders, pleadings, motions and rulings made, entered and filed in the extradition proceeding before Edwin K. Walker as United States Commissioner aforesaid; and the parties hereto have by stipulation of counsel, which said stipulation is attached hereto and made a part hereof, agreed that the said printed abstract, which is attached to this Bill of Exceptions and made a part hereof, together with true copies of all exhibits contained in said return so made by said Edwin K. Walker, as United States Commissioner aforesaid, not included in said printed abstract be

also attached hereto and made a part hereof, and that said printed abstract and said true copies of such exhibits may be considered for all purposes on any appeal in this cause in lieu of the original return of said Edwin K. Walker, as United States Commissioner aforesaid, to said writ of certiorari and may be certified in any proceeding on appeal as a true copy of the return of said Commissioner.

118 Whereupon, representatives of the demanding government in their argument before said Court read extracts from a stenographer's notes of the oral remarks of Judge Louis FitzHenry made at the time Judge FitzHenry sustained a motion made upon behalf of the demanding government to strike a prior petition for a writ of habeas corpus from the files.

Whereupon, the Court took judicial notice that a former petition for discharge on a writ of habeas corpus was stricken from the files by Judge FitzHenry.

Whereupon, representatives of the demanding government urged the Court to adopt the oral remarks of Judge FitzHenry as aforesaid, and hold that the offense of receiving money knowing it to have been fraudulently obtained is a criminal offense under the laws of the State of Illinois.

Whereupon, on the 11th day of February, A. D. 1932, the Court delivered his opinion and ordered the same to be made a part of this Bill of Exceptions, which option is in words and figures as follows:

OPINION OF THE COURT.

A word about the history of the case. In December 1930, a complaint was lodged in London, England, against the defendant. I am speaking of the last complaint, the only one we are concerned with here, and extradition was necessary because Factor, who was charged with a crime in London, was in the United States.

In May 1931, a complaint was filed before Commissioner Walker in this district by the Government of Great Britain, the Demanding Government, asking for extradition.

119 Hearings before the Commissioner began, during which an application for a writ of habeas corpus was brought in this Court on the ground that the crime for which extradition was sought was not a crime in the State of Illinois, the state of asylum. A motion to strike that petition from the files prevailed in this Court. I take the motion to strike in the nature of a demurrer or a motion to dismiss. I am not passing upon the propriety of that motion, or its disposal.

The Commissioner, having resumed and completed the hearings, on January 12, 1932, certified the evidence to Secretary of State, under the provisions of our Federal Law, and ordered Factor into custody.

The proceeding in this Court now is by way of habeas corpus, and challenges the jurisdiction of the United States Commissioner in ordering Factor into custody. The character of that custody I am not considering at all. It seems, at least it has come to me by way of rumor, that it is unusual to say the least, but apparently neither side has objected; certainly the Demanding Government has not objected. Whether he was technically or actually in custody, is not before the Court at this time. I am treating the matfor as if he were actually in the custody of the Marshal
120 of this Court, under Commissioner Walker's order.

In disposing of the matter before me, I am governed by the Treaty between this country and Great Britain of 1889, which enlarged the number of extraditable offenses enumerated in the Treaty of 1842. Some question has been raised that that part of the Treaty of 1842, and which I now quote, provides, "That this shall only be done"—that is, the extradition,—"upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found would justify his apprehension and commitment for trial if the crime or offense had there been committed."

The purport of the argument seemed to be that those words were not contained in the Treaty of 1889. Am I right about that, gentlemen, that the Treaty of 1889 did not contain those words?

My judgment is that the Treaty of 1842 is still in force and that the Treaty of 1889 merely increased the number of extraditable offenses. If that were not so, it would be difficult, it seems to me, to reconcile the action of the Supreme Court of the United States in the Hinkle case, in the 190th and in the Kelly vs. Griffen case in the 241st, and the Mulligan case, reported in 50 Fed. 2nd Series, and I hold for the purpose of this hearing that the two Treaties are to be considered together, and that the provision of the
121 Treaty of 1842 carry on and become a party of the Treaty of 1889.

The essentials of our Treaties with Great Britain in cases of this sort are that the crime charged:—first, must be enumerated in the Treaty; second, made criminal by the De-

manding Government; and, third, made criminal by the laws where the accused is found.

The record shows that the crime charged in London was, "Receiving money knowing it to have been fraudulently obtained," and that such was in fact one of the crimes enumerated in the Treaty of 1889 between this country and Great Britain. The record also shows that "receiving money knowing it to have been fraudulently obtained" was made criminal by the laws of Great Britain. We are concerned in the present proceeding solely with the fact whether or not it was a crime in the place of asylum, State of Illinois. This is purely a question of fact. It can be nothing else.

The record shows evidence was offered by the Respondent of eminent judges and learned assistants to the State's Attorney of Cook County, Illinois. Each one of them testified
122 that as a matter of fact the obtaining of money, knowing it to have been fraudulently obtained, was not a crime in this State. The witnesses, the judges and the assistants to the State's Attorney were open for cross-examination. The Commissioner allowed the other side to offer evidence on the same point, the only limitation being that there should be five such witnesses on each side, and no more.

The main reliance placed by the Respondent, the Demanding Government, is upon the "Fraudulent Conveyance Act of Illinois." To summarize what that Statute condemns, I might put it in these words:

> Every person who shall be a party to a fraudulent conveyance made with intent to deceive and defraud others, or to defeat, hinder, or delay creditors, or others, of their just debts, damages, demands shall be fined not exceeding One Thousand Dollars.

That Statute does not make it a crime to receive money knowing it has been fraudulently obtained. There is no charge in the original proceeding before the Commissioner
123 that Factor had been party to a fraud or had made any conveyance with the intent to defraud his creditors. The Fraudulent Conveyance Act on the Illinois Statute books punishes fraudulent conveyance having certain defined results. There is nothing that can be found there to indicate that a man who receives money, knowing it to have been fraudulently obtained, is intended to be included.

We come now to the Griffen case which is the nub of the whole situation. It has been told the Court that Judge Lan-

dis in that case decided it upon the Illinois Fraudulent Conveyance Act. That may be so. I will say that Mr. Justice Holmes, in disposing of that case, used language which could be construed to the effect that there was in the State of Illinois a law making it a crime to receive money, knowing it to have been fraudulently obtained.

When we come to consider the issues in that case, we find that the crime charged by the Canadian Government was one which made it an offense to receive money, knowing it had been stolen from the Government, or a public official.

124 There were charges of perjury as well. Mr. Justice Holmes, after disposing of the matter of perjury, states:

> "The last charge, 'stealing or embezzling and receiving money fraudulently obtained,' needs a word of explanation. It may be assumed that there is no evidence of larceny or embezzlement, as commonly defined, but the receiving of property known to have been fraudulently obtained is a crime by the laws of both Canada and Illinois."

That is a very broad statement, but it is subject to the limitation of the very issues which the Supreme Court had before it. There was a crime committed in Canada, so charged at least, which was also a crime in the State of Illinois. The receiving of money in the State of Illinois, knowing that it had been fraudulently obtained from some public body or some public officer having public moneys in this charge.—that it had been fraudulently obtained by him, is made a crime under the laws of the State of Illinois.

That the lawyers in that case recognized the situa-
125 tion, no stress was made of our Fraudulent Conveyance Act. They cited the Larceny Statute, the Embezzlement Statutes, the Receiving Statutes, and I will say now that it makes no difference what you call the crime if, in fact, it is identical in substance in both jurisdictions, in the jurisdiction of the Demanding Government and the jurisdiction of the asylum. The only mention made of the Fraudulent Conveyance Act was one parenthetical statement in the brief of counsel for the Canadian Government. The reliance was placed upon different statutes, and Mr. Justice Holmes, in disposing of the case, when he used the language that "the receiving of property known to have been fraudulently obtained, is a crime by the laws both of Canada and of Illinois" must have meant, on the facts in that case, money fraudu-

lently obtained from or by a public official, and received by some person knowing of that fraud.

Now, it must be perfectly clear that the Supreme Court of the United States could not, and Mr. Justice Holmes did not intend to hold that it was an offense against the peace and dignity of the State of Illinois, when in fact it was not.

126 Lawyers on both sides have scoured the Acts of Legislature on this point. They have gone all through the Criminal Code. All that they can find is the Fraudulent Conveyance Act.

Mr. Justice Holmes did say, in general language, that receiving money from one, knowing it was fraudulently obtained, was a crime against the State of Illinois. Whether it was or not was a question of fact. The record in this case discloses that, in fact, there was no such crime in the State of Illinois. No statute has been produced, in the judgment of the Court, making it a crime.

The testimony of the expert witnesses, if I may so designate them, is all to the effect that there was no such crime on the books of the State of Illinois or at common law, as administered in the State of Illinois. The whole proceeding must stand or fall on that question of fact. The Treaty so provides, and I am of the opinion that there is no law in the State of Illinois similar to or substantially the same, making it a crime such as was defined in the jurisdiction of the Demanding Government.

127 An order may be prepared discharging the prisoner.

Now, before the order is entered, I assume that this case is of such importance that what I have said here, or my order, will be taken to the Court of Appeals for review. Under the Revised Statutes, Section 765, the Supreme Court of the United States promulgated rules with reference to the custody of prisoners, pending review of the proceedings in habeas corpus. There are three provisions.

The first is, pending review of a decision refusing a writ of habeas corpus, the custody of the prisoner shall not be disturbed. We are not concerned with that here.

Second, pending a review of a decision discharging the writ of habeas corpus, after it has been issued, the prisoner may be remanded to the custody from which he was taken by the writ or detained in other appropriate custody, or enlarged upon recognizance, with surety, as to the Court or judge

rendering the decision may appear fit in the circumstances of the particular case. We are not concerned with that.

128 Pending review of a decision discharging a prisoner on habeas corpus, he shall be enlarged upon recognizance with assurance for his appearance to answer and abide by the judgment of the Appellate proceedings and, if, in the opinion of the Court or judge rendering the decision, surety ought not to be required, the personal recognizance of the prisoner shall suffice.

I am asking now Counsel for the Demanding Government—it is your intention—

Mr. Overmyer: Of course it is, to appeal.

The Court: —to prepare the papers for appeal?

Mr. Overmyer: Yes.

The Court: Can you have them ready by tomorrow?

Mr. Overmyer: Yes, I am sure I can. Maybe this afternoon, if your Honor can be here.

The Court: What?

Mr. Overmyer: Maybe I can have them ready this afternoon if your Honor will be here.

The Court: Well, I shall be here at half past two, if that is convenient, or three o'clock.

Mr. Overmyer: I wil lwork as speedily as possible in any event.

The Court: What do you suggest as a bond?

Mr. Overmyer: Well, I think it should be Fifty Thou-

129 sand Dollars, your Honor. That was the bond fixed by the Commissioner.

The Court: That was the judgment of the Court before I asked you your judgment.

Mr. Overmyer: Well, that was the bond fixed by the Commissioner, although they agreed never to make that bail.

The Court: But when the appeal is allowed and the order discharging Factor is entered, it is on condition that Factor enter into a bond or recognizance, with surety, in the sum of Fifty Thousand Dollars, "To abide by the judgment of the Appellate proceedings."

Mr. Gilbert: We shall do so.

The Court: That will be found in the United States Code annotated, title 28, Rule 42 U. S. Supreme Court.

Mr. Stansbury: May it please your Honor, what nature and character of surety would you require?

The Court: What.

Mr. Stansbury: What nature and character of surety would you require?

The Court: Good surety.

Mr. Stansbury: Real estate or Liberty Bonds?

130 The Court: Oh, if they put up cash or Liberty Bonds, or Surety Company bond, that will be all right.

Mr. Gilbert: If your Honor please, we will put up Liberty bonds.

Mr. Stansbury: Your Honor will have to approve the bond?

The Court: Yes.

Mr. Overmyer: Your Honor, there is one thing I don't want to quibble over but your Honor makes some mention of the fact that I did not cross-examine the experts. The record, I believe, shows I did. Counsel will admit that I did cross-examine them. I produced no witnesses, but I cross-examined them.

Mr. Gilbert: Yes, you did.

The Court: The witnesses were not shaken on cross-examination and no evidence to the contrary was furnished.

Mr. Overmyer: No.

The Court: The whole thing as it presents itself to me is this question of fact, did we have such a law? Did we define such a crime in Illinois? Now, that is a question of fact. And, as I say, The Supreme Court can't say that it is

131 a fact when, in fact, it is not a fact.

Mr. Overmyer: May I suggest if it were a question of fact, then the Commissioner's finding could not be disturbed.

The Court: Why?

Mr. Overmyer: Because on the question of fact his judgment is supreme unless you can say there is no evidence to support it.

The Court: I can say there is no evidence in the record.

Mr. Overmyer: Of course.

The Court: The only evidence the Commissioner had was our Frandulent Conveyance Act, and he deferred to the opinion of Judge Landis in the Kelly versus Griffin case; he deferred to Judge FitzHenry in basing his opinion on the Kelly case. And the Commissioner himself said substantially were it not for the decisions of Judge Landis and Judge FitzHenry, and were it not for the Griffin case, he would have found the other way.

Now, I am thoroughly convinced, on an examination and an analysis of the Kelly case, that Mr. Justice Holmes did not mean what he said in its comprehensive sense. He said it was a crime in Illinois to do the thing that the man was charged with doing in Canada. That is all.

132 And thereupon, on the 12th day of February, A. D. 1932, Godfrey Haggard, British Consul General, as representative of the demanding government, upon leave of Court first had and obtained, filed as of the 11th day of February, A. D. 1932, his written petition praying leave to be made party respondent and to file an answer instanter, which motion was allowed. The answer was filed and the traverse heretofore filed to the Marshal's return was ordered to stand as a traverse to the said answer of the British Consul General.

And thereupon, to the rulings and holdings of the Court, as appearing in his opinion, aforesaid, the respondent, and said demanding government, by their counsel, on said 12th day of February, A. D. 1932, duly excepted.

And thereupon, on said 12th day of February, A. D. 1932, the Court entered an order as of the 11th day of February, A. D. 1932, discharging the relator from custody, finding:

1. That the Court has full and complete jurisdiction of the parties to this suit and the subject matter thereof.

2. As a fact that receiving money knowing the same to have been fraudulently obtained is not a crime under the laws of the State of Illinois.

3. That the said John Factor, at the time of the issuing and the serving of the said writ of habeas corpus was and is now unlawfully detained by the said H. C. W. Laubenheimer, and ought not to be remanded to his custody.

And thereupon counsel for the respondent duly excepted to the entry of said order, to the findings of the Court, and to the discharge of the relator from custody.

And thereafter, on the 12th day of February, A. D. 1932, the respondents and each of them filed their written petitions to appeal to the United States Circuit Court of Ap-

133 peals for the Seventh Circuit, together with a written assignment of errors, whereupon, the Court entered an order allowing the said appeals upon the respondent's giving a cost bond in the sum of $250.00, and issued a citation returnable March 12th, 1932, and allowed the respondents sixty days within which to settle their bill of exceptions.

Whereupon, counsel for the said John Factor agreed to waive service of the citation and thereupon the Court approved the appeal bond of the respondents and approved the bond of said John Factor in the sum of $50,000.00, as provided in the order of discharge.

Forasmuch, as the matters and things above set forth do not fully appear of record, the respondents, H. C. W. Laubenheimer, United States Marshal, and Godfrey Haggard, British Consul General, tende and present the foregoing as their Bill of Exceptions in said cause, and pray that the same may be settled, allowed, signed and sealed, and made a part of the record in said cause by this Court pursuant to the law in such cases; Certifi Jud

Which is accordingly done and ordered by the Court on this 21st day of March, A. D. 1932.

GEO. A. CARPENTER (Seal)
Judge.

Presented in open Court this 9th day of March, A. D. 1932.

CHARLES E. WOODWARD
United States District Judge.

O. K.

LEVINSON, BECKER GLENN AND SCHWARTZ
BUTLER, POPE, BALLARD & ELTING
F. R. OVERMYER
JOHN G. DRENNAN
Attys for Dem, Garth & U. S. Marshal

134 * * (Caption) * *

STIPULATION.

(Filed Mar 9 1932)

It Is Stipulated by and between the parties hereto that the printed abstract attached hereto, consisting of a true abstract of the depositions and documents of the demanding government and the testimony of witnesses produced by John Factor, and all orders, pleadings, motions and rulings made, entered and filed in the extradition proceeding before Edwin K. Walker, United States Commissioner in and for the Northern District of Illinois, Eastern Division, together with a true copy of all exhibits contained in said return so made by Edwin K. Walker, as United States Commissioner aforesaid, attached to said abstract may be considered for all purposes of this appeal and for all purposes shall take the place and be in lieu of the original return of said Edwin K. Walker, as United States Commissioner as aforesaid, to the writ of certiorari issued out of the United States District Court for the Northern District of Illinois, Eastern Division.

G. Gale Gilbert Jr.
Attorney for John Factor.

Franklin R. Overmyer
Attorney for H. C. W. Laubenheimer, United States Marshal, and the Kingdom of Great Britain, Demanding Government.

135 (Endorsed:) * * (Caption) * * Bill of Exceptions Presented and Stipulation Filed Mar 9 1932 at .....o'clock .....M. Charles M. Bates Clerk, F. R. Overmyer John G. Drennan 33 S. Clark. Rand 1625.

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

THE UNITED STATES OF AMERICA, ex rel. JOHN FACTOR, Petitioner, vs. H. C. W. LAUBENHEIMER, United States Marshal for the Northern District of Illinois, Respondent.	Petition for Writ of Habeas Corpus. — Certiorari to Honorable Edwin K. Walker, Commissioner.

ABSTRACT OF RECORD.

Page of Record

1 Return of Honorable Edwin K. Walker, United States Commissioner for the Northern District of Illinois, Eastern Division, to the writ of certiorari.

2 Writ of certiorari.

3 MOTIONS MADE—RULINGS OF COMMISSIONER THEREON AND OBJECTIONS THERETO.

May 20, 1931. Respondent did, in open court, make oral motion to be enlarged upon bail, whereupon said motion was continued from time to time until July 28th, upon which date the motion was allowed and bail fixed at the sum of $50,000.

Motion by demanding government for continuance.

Motion was granted and case continued to Monday, May 25, 1931.

May 25, 1931. Motion of demanding government to dismiss original complaint filed herein. Motion granted and original complaint herein dismissed.

Second complaint of demanding government filed and warrant issued thereon. Respondent waived service of warrant. Warrant returned.

Motion of respondent to dismiss complaint and quash warrant filed. Argument heard—ruling reserved—respondent excepted.

Motion of demanding government to read depositions into the record. Motion granted. Reading of depositions commenced.

May 26, 1931. Objections of respondent to authentication of depositions. Ruling reserved. Reading of depositions continued.

4 May 27, 1931. Reading of depositions continued. Argument on motion to dismiss resumed. Ruling on motion to dismiss taken under advisement.

May 28, 1931. Reading of depositions continued.

May 29, 1931. Reading of depositions continued.

Motion of demanding government for continuance for two weeks' time within which to have depositions printed.

Cause adjourned. Continued to June 8, 1931.

June 8, 1931. Cause continued for checking of printed depositions to Monday, June 17, 1931, at 2 o'clock.

June 17, 1931. General and special objections of respondent to depositions filed. Argument thereon set for June 22d.

June 22, 1931. Second motion to dismiss complaint and quash warrant filed.

Argument on general objections to depositions.

June 23, 1931. Argument on general objections to depositions resumed.

June 24, 1931. Argument of general objections to depositions resumed. General objections taken with cause.

5 July 7, 1931. Argument on second motion to dismiss warrant and quash writ. Motions taken under advisement.

July 14, 1931. Motion to dismiss warrant and quash writ overruled on ground that "demanding government should not be concluded here on the face of the complaint and warrant but that it should have its opportunity to present its evidence and depositions * * * and that this case should be determined upon the whole record as and will hereafter be made." Respondent excepted to ruling of court. Cause continued to July 20, 1931.

July 20, 1931. By agreement of parties, question of respondent's right to bail reargued. Motion for bail taken under advisement.

July 28, 1931. Motion for bail granted. Bail fixed at $50,000. (At this time counsel for demanding government gave notice in open court that application would be made to a Judge of the Circuit or District Court to set aside said order on bail.) Cause adjourned to August 3d.

August 3, 1931. Motion of respondent to continue hearings pending appeal on habeas corpus to Circuit Court. Argument on motion. Motion taken under advisement.

August 6, 1931. Further argument on motion to continue hearings pending appeal on habeas corpus to Circuit Court.

6 August 11, 1931. Ruling on motion to continue hearings pending appeal on habeas corpus to Circuit Court. Denied. Respondent excepts.

August 13, 1931. Reuewal of argument on motion to dismiss. Argument on special objections to depositions.

August 17, 1931. Continuation of argument on special objections to depositions.

August 18, 1931. Argument on special objections to depositions.

August 20, 1931. Argument on special objections to depositions.

August 21, 1931. Argument on special objections to depositions.

August 24, 1931. Argument on special objections to depositions.

August 25, 1931. Argument on special objections to depositions.

August 26, 1931. Argument on special objections to depositions.

August 27, 1931. Argument on special objections to depositions.

August 28, 1931. Argument on special objections to depositions.

September 1, 1931. Argument on special objections to depositions.

September 3, 1931. Argument on special objections to depsitions. Special objections taken with cause. Ruling reserved.

September 8, 1931. Argument on law of England.

September 9, 1931. Argument on law of England. Motion of respondent for continuance to bring witnesses from abroad. Motion granted. Cause continued to September 25th.

7 September 24 to October 16, 1931. Hearing of witnesses for respondent, including legal expert witnesses.

October 20, 1931. Motion by respondent at close of all of the evidence to dismiss complaint and quash warrant. Motion taken with case and overruled December 28th; to which ruling respondent excepted.

December 28, 1931. Opinion and announcement of conclusions made.

January 12, 1932. Order certifying evidence and testimony to Secretary of State entered. Commitment issued; to which respondent excepted.

EDWIN K. WALKER,
United States Commissioner for the Northern District of Illinois, Eastern Division.

8 The Commissioner: It appears that the representatives of the demanding government in the matter of the extradition proceedings here and the respondent, Mr. Factor, and his counsel, are present. I had set this time for my decision in this case. I want to say just a word about the history of the proceeding before I announce my findings and read my reasons for my findings.

The respondent first came before me on a complaint that was filed by Mr. Godfrey Haggard, British Consul, Chicago, upon which a warrant was issued, and several days thereafter, as I recall about eight days thereafter, respondent

9 surrendered himself to the Marshal, and was brought before me. Motion was at once made on behalf of the respondent to enlarge him upon bail, and to dismiss the complaint. That complaint was upon information and belief. An adjournment for some days was had. I then denied the motion then made at that time to admit the respondent to bail, remanded him to the custody of the Marshal, and postponed the hearing of the motion then made. At the time that case came up for hearing again, the demanding government dismissed its complaint on motion and prayed leave to file a new complaint. The complaint was then ready and was sworn to. The defendant was present in court and instantly surrendered

to our custody upon this second complaint, which is the complaint in the pending case.

This case has been very extended in its hearing. Ordinarily an extradition proceeding is a simple proceeding and ought not to take long. Hearings are most generally rather formal and consist mainly in the examination of documentary evidence which has been transmitted, authenticated by proper officers, but the extraordinary and unusual features in this case have caused its prolongment maybe a little bit more than was necessary. As I look back over it, I cannot see that we could have very well done otherwise than we did in the manner of the hearings and the most of the continuances. Three or four weeks, I don't recall just now, but some three weeks I think at least was taken early in the proceeding in order to enable the evidence of the demanding government to be printed into a book form. A great deal of time was taken in the hearing upon the motion to admit the respondent to bail. The evidence of the demanding government was lengthy, and specific objections were in the course of the proceedings made to every item of the evidence. Numerous motions were made. A habeas corpus proceeding was initiated and sued out during the pendency of this case, which habeas corpus proceeding was heard before the District Judge. Motion was made to suspend proceedings here while an appeal from the decision on that habeas corpus was pending. An adjournment was taken at the request of the respondent to bring witnesses from abroad. The arguments have been very lengthy, the authorities cited numerous. The questions, some of them, involved, were of great closeness and nicety. I say this in explanation of the length of the proceedings.

In making my decision here, I have thought it well to express my views in an opinion, which I have transcribed here. It is a little longer than I would have liked to have had it, but it is difficult to shorten it much, and I shall now read that opinion, which will lead to my conclusions. There are some motions that have been made of record here that will have to be disposed of which I will do at the close of the reading of this opinion.

An extradition proceeding is not a trial. The Commissioner hearing such a proceeding is not a court in the true sense of that term. Such Commissioner, however, is necessarily vested with special judicial function. Mr. Justice

Brown of the United States Supreme Court, in the case of *Grin* v. *Shine*, 187 U. S. page 181, has said:

"The Commissioner is in fact an agent of the court, possessing independent though subordinate judicial powers of his own."

Having acquired jurisdiction in the manner provided in the statute governing the proceedings, it is provided that:

"Evidence of criminality may be heard and considered. If on such hearing he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy
12 of all the testimony taken before him, to the Secretary of State."

The treaty involved in this cause provides:

"That this shall only be done upon such evidence of criminality as according to the laws of the place where the fugitive or the person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had there been committed."

This extradition proceeding is brought under the provisions of the Convention of 1889, commonly known as the Blaine-Pauncefote Treaty, in which certain offenses were added to these enumerated in Article 10 of the then existing Treaty of 1842, known as the Webster-Ashburton Treaty.

Section 3 of Article 1 of said Convention of 1889 provides for extradition for "embezzlement; larceny; receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained."

This convention also provides as follows:

"Extradition is also to take place for participation in any of the crimes mentioned in this convention or in the aforesaid Tenth Article, provided such participation be punishable by the laws of both countries."

It is therefore incumbent upon the demanding govern-
13 ment to show the offense charged to be under the provisions of the treaty and also to exhibit such evidence of criminality as according to the laws of the place where the respondent charged is found would justify his apprehension and commitment for trial if the offense had there been committed. In the instant case, that place is the State of Illinois.

The complaint here charges that the respondent, in Lon-

don, England, received certain sums from a corporation, known as the Broadstreet Press Limited, knowing the same to have been fraudulently obtained. There is no charge in the complaint of embezzlement or larceny, or receiving money, valuable security, or other property, knowing the same to have been embezzled or stolen. Counsel for the demanding government has contended that there is some evidence tending to prove larceny as bailee or larceny by trick. This is not charged in the complaint, and I now say that I am unable to discover in the record sufficient competent evidence to sustain such finding. I am therefore constrained, in the light of the rules regarding the interpretation of treaties and the testing of the evidence of criminality, to determine this case upon the charge of receiving sums knowing the same to be fraudulently obtained.

The offense charged in the complaint is clearly one
14 enumerated in the treaty. The determination as to whether or no this charge and the evidence of criminality here shown bring this respondent within the treaty by a correct interpretation thereof is not without difficulty.

There is no criminal offense described in the statutes of Illinois in exact correspondence with the offense charged in the complaint. Receiving money, valuable security, or other property knowing the same to have been fraudulently obtained is not in specific language made an offense by the laws of this state.

In the interpretation of treaties in considering extradition proceedings, our courts have laid down principles which I am bound to consider. In the case of *Grin* v. *Shine, supra*, opinion by Mr. Justice Brown, the United States Supreme Court has said:

"In the construction and carrying out of such Treaties the ordinary technicalities of criminal proceedings are applicable only to limited extent. Foreign powers are not expected to be versed in the niceties of our criminal laws, and proceedings for surrender are not such as put in issue the life or liberty of the accused. They simply demand of him that he shall do what all good citizens are required and ought to be will-
15 ing to do, viz.: submit themselves to the laws of their country. Care should doubtless be taken that the Treaty be not made a pretext for collecting private debts, wreaking individual malice, or forcing the surrender of political offenders."

Also:

"These Treaties should be faithfully observed and interpreted with the view to fulfill our just obligations to other powers without sacrificing the legal constitutional rights of the accused."

In *Wright* v. *Henkle,* 190 U. S. pages 40-61, the Supreme Court says:

"When by the law of Great Britain and by the law of the state in which the fugitive is found, the fraudulent acts charged to have been committed are made criminal, the case comes fairly within the treaty which otherwise would manifestly be inadequate to accomplish its purpose."

In *Tucker* v. *Alexandroff,* 183 U. S. 434, the court says:

"As treaties are solemn engagements entered into between independent nations for the common advancement of their interests and the interests of civilization, and as their main object is not only to avoid war and secure a lasting
16 and perpetual peace, but to promote a friendly feeling between the people of the two countries, they should be interpreted in the broad and liberal spirit which is calculated to make for the existence of a perpetual amity, so far as it can be done, without the sacrifice of individual rights or those principles of personal liberty which lie at the foundation of our jurisprudence. It is said by Chancellor Kent in his Commentaries, Volume 1, page 174:

"'Treaties of every kind * * * are to receive a fair and liberal interpretation according to the intentions of the contracting parties, and to be kept with the most scrupulous good faith.'"

The evidence of the demanding government was offered with certificate of authentication by the United States Ambassador at London. It consists in addition to certified copies of information, warrants, etc., of the depositions of some sixty-four witnesses together with some two hundred exhibits. Much of this evidence is of such character as to fall short of tests ordinarily applied in a trial. Motion was made by counsel for the respondent to exclude this evidence. This evidence seems to have been certified conformable to the provisions
17 of the statute and I am compelled to receive it. In determining what weight should be given to the evidence, I have striven to conform to tests governing such proceedings.

In *Collins* v. *Leisel,* 250 U. S. 309, it is said, "The phrase 'such evidence of criminality' as used in the treaty, refers

to the scope of the evidence or its sufficiency to block out those elements essential to a conviction. It does not refer to the character of specific instruments of evidence, or to the rules governing admissibility. Thus, unsworn statements of absent witnesses, may be acted upon by the committing magistrate, although they could not have been received by him under the law of the state on a preliminary examination."

Much of this evidence I have disregarded. Without specifying in detail, I will say, for illustration, that statements of the four or five witnesses who were alleged victims of the so-called fraud, that "they had investigated and found the stocks purchased to be worthless" should be disregarded, but their testimony as to the facts of the purchase and the inducements thereto should be regarded and given such weight as the circumstances justify.

The testimony discloses that the Broadstreet Press, Ltd., had a brief but remarkable career beginning in 1928 and that in one way or another it continued activities until the
18 fall of 1930. Directors testified that they had no real management or control and that their activities respecting the affairs of the corporation were almost wholly at the direction and dictation of other persons, in some instances the respondent, who did not appear to have been officers.

Cyril Thomas Newman, a witness for the demanding government, who had been appointed official receiver of the company, testified at length as to what the records of the company disclosed as to the conduct of its affairs. It appeared that the net receipts of the Broadstreet Press, after its organization in 1928 and to the end of 1928, were in the neighborhood of £29,000; for the year 1929 that total receipts of £83,045 are shown of which £78,000 were loans; that up to the end of February, 1930, total receipts of the company were £115,848, of which £108,720 were loans; that in the month of March, 1930, receipts were £102,353, no part thereof being through loans; that during the eight months from March to October, 1930, receipts were £1,619,726. The bulk of this sum appears to have been received from clients or proceeds of sales of securities received from clients.

It appears that the company was dealing with its clients in listed stocks of certain companies, particularly Edison
19 Bell, Swears & Wells, Tri-plex Safety Glass and Guy Motors; that the company advised its clients to purchase these stocks at certain figures and resell at an advance. For

example, it advised the purchase of Edison Bell at 14 shillings a share and the resale of this stock at 23 shillings a share; the purchase of Guy Motors at 15 shillings and resale at 19 shillings; the purchase of Tri-plex Safety Glass at 25 shillings and a little later the sale of 35 shillings; the sale of Swears & Wells at 21 shillings.

It is disclosed from the deposition of Newman that the company had bought 211,669 shares of Edison Bell at 23 shillings or £241,149, which their clients had bought at 14 shillings; that they sold 60,729 shares of Guy Motors at 15 shillings or £45,849 and repurchased 59, 610 shares at 19 shillings or £56,627; that they sold 127,843 shares of Swears & Wells at £94,162 of which they had repurchased 114,347 shares at £118,767; that they had sold 62,778 shares of Triplex Glass at 25 shillings and repurchased 58,321 shares at 35 shillings; these transactions showing profits to the clients and losses to the company as follows: Edison Bell £73,633, Guy Motors £10,732, Swears & Wells £24,605, and Tri-plex Safety Glass £20,064. It is claimed that these transactions were carried on as a lure to facilitate subsequent sale of worthless stock.

The evidence discloses that these clients were advised to reinvest in Asbestos & Holding Trust, Ltd., Rhodesia Border Mining Corporation, Ltd., and Vulcan Copper Mines, Ltd., which stocks the demanding government contends were worthless stocks.

It appears that circulars marked private and confidential, were sent out by the Broad Street Press, Ltd., to promote the sale of these several stocks. As to the Asbestos & Holding Trust, Ltd., the circular recited that this stock was offered by the company as principal. As to the stock of the other two companies, nothing was said on that point. It appears the company had acquired the Asbestos & Holding Trust, Ltd., stock for £52,500 and sold the same for £297,405; that the company sold the Rhodesia Border Mining shares for £623,790, for which it appears they had paid the sum of £33,000. It appears similar purchases and resales at great profit were made of the Vulcan Copper Mines, Ltd., stock.

A director, Osborne, deposed that respondent known to him as J. Walker, had been introduced to him and that he, Walker, had informed him that he was about to publish a financial paper and asked him to become a director. A financial paper was published by the Broad Street Press carry-

ing the name of Osborne as editor, although Osborne testified that he had nothing to do with the editing of said paper. Later the name of the paper was changed, the name of Osborne dropped and the name of Norman D. Spencer
21 substituted as editor. The name of Norman D. Spencer, editor, appeared upon several letters sent to clients, with the name of Broad Street Press as proprietors. Some of these letters contained advice to the effect that Mr. Spencer had unique source of inside information. Letters were sent to clients purporting to have been signed by Norman D. Spencer advising purchase of stocks in question. There is no evidence in the record as to the identity of Norman D. Spencer and so far as the record appears, no one seems to have known him. One witness, however, an employee of the Broad Street Press, deposed that she was instructed when any inquiries came for Mr. Spencer to refer them to the room at the office of the Broad Street Press which was occupied by the respondent and one Klein.

The evidence discloses that from the 13th day of June, 1930, to the 27th day of October, 1930, payments by check were made to the respondent under the name of H. Wise, amounting to £709,180. On the 27th day of October, 1930, it appears that a meeting of the officers of the company was held to discuss voluntary liquidation. At that time it appears that there was a balance of £6,569 to the credit of the company in Bank. £6,000 on that day was paid to the respondent under the name of H. Wise, leaving a balance of £569.

22 The nature of the evidence and testimony of the demanding government was such that the door was opened for explanatory testimony on behalf of the respondent. No testimony was offered by the respondent respecting the transactions of the Broad Street Press, Ltd., and the receiving therefrom of the moneys charged to have been obtained by him.

The respondent produced two witnesses. One an assayor who testified respecting certain samples of ores that had been submitted to him, claimed to have been taken from the mining properties and a witness one, Major Harry Brian Pearson, a mining expert, who testified at great length respecting his examination of the properties alleged to be owned by the said mining companies. While this testimony disclosed the indication of the presence of ore in the properties, it appears that none of them are in any sense working mines or that

ore bodies of any great extent have been uncovered and blocked out. The prospects appear to be only prospects. It may be there are very good prospects but the extent of the ore bodies, the costs of developments and carrying on mining operations were but estimates and estimates only. It appears that while Major Pearson was making these investigations in Africa, the scheme for the sale of the stock of the companies was then well under way in London.

Numerous exhibits were offered in evidence by the respondent, consisting of maps, plats and reports respecting the
23 properties. What purported to be copies of contracts for the purchase of rights to these properties, were also offered in evidence by the respondent. I am unable to determine from these whether or no there was any vested property rights in the companies as to these so-called mining properties or claims.

Considering the evidence produced at the hearing, I am of the opinion that the Broad Street Press, Ltd., was engaged in the carrying on of a fraudulent scheme respecting the sale of the stocks in question.

Testimony was offered by the respondent of certain witnesses learned in the law upon the question of whether or no "receiving money knowing the same to have been fraudulently obtained" is an offense in Illinois. One of these witnesses was formerly a Justice of the Supreme Court of Illinois. One was a Judge of the Circuit Court of Cook County, and one a Judge of the Superior Court of Cook County, both of whom have had quite an extended experience as Judges of the Criminal Court of Cook County, a court of general criminal jurisdiction. Two other witnesses on these points were both men of long experience as Assistant State's Attorneys in this county.

It is unusual to receive evidence of the law as a matter of fact, except where it is sought to prove the law of a foreign jurisdiction. Explanation of why this evidence was received may be timely here. It was contended that in my capacity as United States Commissioner, I am not to take judicial
24 notice of the laws of Illinois. I do not wish it understood that I agree with this contention. I did, however, in consideration of certain authorities that were cited, receive this testimony in exercise of the right of discretion in that regard.

These witnesses testified to the effect that "receiving money

known to have been fraudulently obtained" is not an offense in Illinois. However, it seems that the District Court of the Northern District of Illinois of the United States Supreme Court has considered and passed upon that question.

This brings us to the consideration of the case of *Kelly* v. *Griffin*, 241 U. S. page 6. In that case the respondent Kelly was held for extradition to Canada under the same treaty here involved, by a United States Commissioner of this district. The respondent was there charged with perjury, obtaining money by false pretenses, and receiving moneys knowing the same to have been fraudulently obtained. This case was taken by habeas corpus to our United States District Court here, and ultimately to the United States Supreme Court.

I have made a very exhaustive examination in this case. I have examined the briefs of the appellant and of the demanding government, and carefully considered the opinions of the District Judge Kenesaw M. Landis and of Justice Holmes in the Supreme Court. District Judge Landis said:

"There is a dearth of authority, as far as the argument before me was concerned, and as far as my independent examination of it is concerned, on this particular clause. But in the State of Illinois there is a statute which makes it an offense for a man to receive money which is embezzled by another man. There is a statute which in my opinion makes it an offense for a man to receive money that has been fraudulently obtained to his knowledge by another person from somebody else. 'Every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance, had, made or contrived with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts,' etc., 'or who being a party as aforesaid at any time shall wittingly or willingly put in use, avow,' etc., 'or defend the same or any of them as true, and done, had or made in good faith or upon good consideration, or shall sell or assign, shall be fined $1,000.' That is the only statute I find in Illinois, strange enough, that meets the situation here."

He further says in his opinion:

"The good faith that must characterize the treatment of a demand by one Government on another Government for the

surrender of a fugitive charged with an extraditable offense would not permit the United States, on the showing of
26 fact made here, if there was no charge of perjury and no charge of obtaining money by false pretenses, to refuse to give up Kelly on that charge, in my opinion, even though Kelly himself was a party to the fraud, the object and purpose and result of which was separating the Canadian Government from its money."

The writ of habeas corpus was denied. This case was carried to the United States Supreme Court and affirmed. In the opinion by Mr. Justice Holmes it is said:

"It may be assumed that there is no evidence of larceny or embezzlement as (commonly) defined, but the receiving of property known to have been fraudulently obtained is a crime by the laws of both Canada and Illinois. There may be a doubt whether the appellant, if a party to the fraud, received the money of the Government directly from it, or through a third hand so as to be guilty under this count of the complaint. We are not prepared to pronounce his detention upon the count unjustifiable in view of the finding."

It, therefore, seems clear that the question as to whether or no an extradition can be had under the treaty and upon this charge, has been determined by the District Court of this district, and by the United States Supreme Court.

During these proceedings this respondent applied for writ of habeas corpus to our District Court, raising this ques-
27 tion. District Judge Fitzhenry in his opinion said:

"The court feels that the expression of Mr. Justice Holmes is conclusive upon this court. The question has heretofore been passed upon by the Supreme Court of the United States, and it is not for this court to presume to reverse the Supreme Court of the United States. If that holding is to be changed, it is to be changed by the Supreme Court of the United States itself."

I concur with Judge Landis that no other statute in Illinois makes the act of receiving moneys which are the proceeds of a fraud an offense. I cannot assume that the Supreme Court had any other statute in mind. I am bound by its ruling.

It has been most earnestly contended by the respondent that this case does not correctly state the law of Illinois and that the Illinois statute referred to, does not properly bring the acts therein made an offense, within the purview of the

treaty. This statute is substantially declaratory of the common law of England and is practically identical with the statute of 13th Elizabeth, Chapter 5. The common law of England, prior to fourth year of James II, except where changed by statute, is the law in Illinois. (Chapter 28, Revised Statutes of Illinois.) It may well be said that whether or no the acts made an offense in said statute come within the purview of the treaty, is a question of great nicety and closeness. It may be well regarded as one which ought to have further judicial interpretation by the courts of
28 ultimate review.

This opinion indicates my views on the evidence and the questions of law, so that I am constrained to find that the demanding government have complied with the statute, and hold the defendant for extradition under the proper order. Finding and order to that effect I will now enter of record—

Mr. Gilbert: If your Honor please, may I interrupt?

The Commissioner: However, I will now indicate the rulings upon the pending motions. The motion to strike all of the evidence, exclude all of the evidence, is overruled. Motion to dismiss at the close of the demanding government's case is overruled. I think those are the only motions that were made and that are undisposed of.

Mr. Gilbert: Your Honor, may I address the Court?

The Commissioner: Yes.

29 IN THE MATTER OF THE APPLICATION FOR THE EXTRADITION OF HARRY WISE, alias J. Factor, alias GUEST, alias J. Walker, a fugitive from justice under the treaty between the United States and Great Britain.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

To the Honorable Henry L. Stimson,
Secretary of State of the United States:

I, EDWIN K. WALKER, a United States Commissioner for the Northern District of Illinois specially authorized and empowered to perform all the duties of a United States Commissioner under the extradition laws and treaties of the United States, do hereby certify to the proceedings in the above-entitled matter to be as follows:

On the 25th day of May, 1931, GODFREY HAGGARD, his Brittanic Majesty's Consul General in Chicago, made complaint under oath and in writing before me, charging HARRY WISE, alias J. FACTOR, alias GUEST, alias J. WALKER, with having committed certain crimes of receiving money knowing the same to have been fraudulently obtained, as set forth in said complaint, at the City of London, England, within the jurisdiction of the Kingdom of Great Britain, as follows:

"That heretofore, and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the City of London, England, and within the jurisdiction of his Britannic Majesty, one HARRY WISE, alias J. FACTOR, alias GUEST, alias J. WALKER, received from Broad Street Press Limited the sums of £15,000 and £70,000, respectively, knowing the same to have been fraudulently obtained;

30 That heretofore, and on or between the 3rd day of October, 1930, and the 27th day of October, 1930, at the aforesaid City of London, England, said HARRY WISE, alias J. FACTOR, alias GUEST, alias J. WALKER, received from Broad Street Press Limited the sum of £131,000 as follows:

On the 3rd day of October, 1930, the sum of £30,000
On the 14th day of October, 1930, the sum of £10,000

On the 16th day of October, 1930, the sum of £20,000
On the 15th day of October, 1930, the sum of £25,000
On the 17th day of October, 1930, the sum of £40,000
On the 27th day of October, 1930, the sum of £6,000

That heretofore, and on or between the 14th day of June, 1930, and the 30th day of September, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, did receive from Broad Street Press Limited the sum of £242,500, knowing the same to have been fraudulently obtained."

And said complaint further charges that the crimes therein set forth are crimes provided for in the treaties for the extradition of fugitives between the government of the said Kingdom of Great Britain and the government of the United States and that the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker is a fugitive from the justice of England and was within the said Northern District of Illinois.

Accordingly, thereupon, on the 25th day of May, 1931, I issued a warrant for the apprehension of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, said warrant being directed to the United States Marshal for the Northern District of Illinois and any Marshal or his deputies in the United States, and the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, having voluntarily surrendered himself to the said Marshal for the Northern District of Illinois, was, on the 25th day of May, 1931, arraigned before me.

31 Thereupon, on various days hearing was had upon said complaint and evidence was offered and received on behalf of the demanding government, consisting of depositions and exhibits, and evidence and exhibits were offered and received on behalf of the respondent, Harry Wise, alias J. Factor, alias Guest, alias J. Walker. The said respondent, from the time of his arraignment until January 12th, 1932, was kept in the custody of the said Marshal for the Northern District of Illinois.

On the 12th day of January, 1932, at my office in the City of Chicago and in the District aforesaid, the matter coming on for final hearing and disposition, and there appearing for the government of the Kingdom of Great Britain Franklin R. Overmyer and A. J. Petit, Jr., and for the respondent Messrs. Levinson, Becker, Glenn & Schwartz, with George Gale Gilbert, Jr., and Don M. Peebles and David D. Stansbury

of counsel, and it appearing to my satisfaction that there is sufficient evidence to sustain the charges under the provisions of the said treaties, I accordingly issued my mittimus for his commitment dated the 12th day of January, A. D. 1932, a true copy thereof being attached hereto and made a part hereof by reference thereto.

Thereto I annex a copy of the depositions, testimony and exhibits, together with a true copy of the complaints, war-
32 rants, motions, objections, and pleadings, taken, had, made and received before me in said hearing, and I hereby certify said copies to be true copies thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 12th day of January, One Thousand Nine Hundred and Thirty-two.

EDWIN K. WALKER,
United States Commissioner for the Northern District of Illinois, and a Commissioner duly authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States concerning the extradition of fugitives from justice of a for-
Seal *eign government under treaty or convention between this and any foreign government.*

ay 5, 33 Before Honorable Edwin K. Walker, United States Commissioner.

IN THE MATTER OF THE APPLICATION FOR EXTRADITION OF HENRY WISE, alias J. FACTOR, alias GUEST, alias J. WALKER, a fugitive from justice, under the Treaty between the United States and Great Britain.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

GODFREY HAGGARD, his Britannic Majesty's Consul General, Chicago, being first duly sworn, upon his oath deposes and says that he is informed and believes and thereupon states:

That heretofore and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the City of London, England, and within the jurisdiction of his Britannic Majesty, one Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press, Ltd., the sum of £15,000 sterling and £70,000 sterling, respectively, knowing the same to have been fraudulently obtained.

Second, that heretofore and on or between the third day of October, 1930, and the 27th day of October, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press, Ltd., the sum of £131,000 sterling as follows:

On the third day of October, 1930, the sum of £30,000,
On the 14th day of October, 1930, the sum of £10,000,
On the 16th day of October, 1930, the sum of £20,000,
On the 16th day of October, 1930, the sum of £25,000,
On the 17th day of October, 1930, the sum of £40,000,
On the 27th day of October, 1930, the sum of £6,000,

knowing the same to have been fraudulently obtained;

Third, that heretofore and on or between the 14th day of June, 1930, and the 30th day of September, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press, Ltd., the sum of £242,500 sterling, knowing the same to have been fraudulently obtained;

That at the times and place aforesaid the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, did, by means
34 of false pretenses obtain the aforesaid sums from the Broad Street Press, Ltd., thereby committing the crime of obtaining money by means of false pretenses.

Affiant further states that the information upon which this complaint is based is derived from dispatches to him from his Britannic Majesty's Embassy at Washington and from his Britannic Majesty's Consul General at New York City, wherefrom it appears that warrants have been issued for the arrest of said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, and requesting his apprehension;

That the foregoing crimes with which the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is charged are indictable crimes in the Kingdom of Great Britain, and an offence within the Treaties between the United States and the Kingdom of Great Britain and Ireland;

That said Harry Wise, alias J. Factor, alias Guest, alias

J. Walker, is a fugitive from the Kingdom of Great Britain and is now within the territory of the United States.

Further affiant sayeth not.

GODFREY HAGGARD,
British Consul General.

Subscribed and sworn to before me this 5th day of May, A. D. 1931.

EDWIN K. WALKER,
United States Commissioner for the Northern District of Illinois, and Commissioner duly authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States concerning the extradition of fugitives from justice of a foreign government under a treaty or convention between this and any foreign government.

Seal

35 *The President of the United States of America*
To any Marshal of the United States to
the Deputies of any such Marshal
or either of them.

Issued 1931.

WHEREAS, a complaint has been made on oath under the Treaty between the United States of America and Great Britain, signed at Washington on the Ninth day of August, One Thousand Eight Hundred and Forty-two, the ratifications whereof were exchanged at London on the Thirteenth day of October, in the same year, and a convention supplementary to the said Treaty between the same high contracting parties, concluded at Washington on the Twelfth day of July, One Thousand Eight Hundred and Eighty-nine, the ratifications whereof were exchanged at London on the Eleventh day of March, One Thousand Eight Hundred and Ninety; and the further convention supplementary to the said Treaty, concluded at Washington on the Thirteenth day of December, One Thousand Nine Hundred, the ratifications whereof were exchanged at Washington on the Twenty-second day of April, One Thousand Nine Hundred and One; and a further convention supplementary to the said Treaty, concluded at London on the Twelfth day of April, One Thousand Nine Hundred and Five, the ratifications whereof were exchanged at Wash-

ington on the Twenty-first day of December, One Thousand Nine Hundred and Six, before me, Edwin K. Walker, a commissioner appointed by the District Court of the United States for the Northern District of Illinois, and also a Commissioner especially appointed and authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States, concerning the extradition of fugitives from justice of a foreign government, under a Treaty or convention between this and any foreign government, for the apprehension and delivery up of certain offenders;

That heretofore and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the City of London, England, and within the jurisdiction of his Britan-
36 nic Majesty, one Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sums of Fifteen Thousand Pounds (£15,000) Sterling and Seventy Thousand Pounds (£70,000) Sterling, respectively, knowing the same to have been fraudulently obtained; that heretofore and on or between the 3rd day of October, 1930, and the 27th day of October, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press Limited, the sum of One Hundred and Thirty-one Thousand Pounds (£131,000) Sterling, as follows:

On the 3rd day of October, 1930, the sum of £30,000,
On the 14th day of October, 1930, the sum of £10,000,
On the 16th day of October, 1930, the sum of £20,000,
On the 16th day of October, 1930, the sum of £25,000,
On the 17th day of October, 1930, the sum of £40,000,
On the 27th day of October, 1930, the sum of £6,000,

knowing the same to have been fraudulently obtained; that heretofore and on or between the 14th day of June, 1930, and the 30th day of September, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press Limited, the sum of Two Hundred and Forty-two Thousand Five Hundred Pounds (£242,500) Sterling, knowing the same to have been fraudulently obtained;

That the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker is a fugitive from the justice of England, Kingdom of Great Britain, and is now within the territory of the United States, and a warrant has been issued at Lon-

don, England, aforesaid, for the apprehension of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, for the offenses herein charged; and that the crime with which the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is herein charged is an offense within the Treaties between the United States and Great Britain.

NOW, THEREFORE, WE COMMAND YOU FORTHWITH to take said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, and bring him before me, the said Commissioner, at my office
37 in Room 878, Federal Building, City of Chicago, State of Illinois, or before the nearest Justice, Judge or Commissioner in the District in which said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is apprehended, authorized to act in any proceeding for the extradition of fugitives from justice of a foreign government, as provided in Section 5270 of the Revised Statutes of the United States, in order that the evidence of the criminality of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, may be heard and considered and if deemed sufficient to sustain the charge that the same may be certified, together with a copy of the proceedings to the Secretary of State, that a warrant may issue pursuant to the Treaties.

WITNESS MY HAND AND OFFICIAL SEAL this 25th day of May, A. D. 1931.

EDWIN K. WALKER,
United States Commissioner and also a Commissioner especially appointed to execute the provisions of Title LXVI of the Revised Statutes of the United States for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivery of certain offenders.

(United States Commissioner Seal attached)

38 Before Edwin K. Walker, Esq., United States Commissioner.

IN THE MATTER OF THE APPLICATION FOR EXTRADITION OF HARRY WISE, alias J. FACTOR, alias GUEST, alias J. WALKER, a fugitive from justice under the Treaty between the United States and Great Britain.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

Dat
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GODFREY HAGGARD, his Britannic Majesty's Consul General at Chicago, Illinois, being first duly sworn, upon his oath deposes and says that he is informed and believes and thereupon states:

1. That heretofore and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the City of London, England, and within the jurisdiction of his Britannic Majesty, one Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sums of £15,000 and £70,000, respectively, knowing the same to have been fraudulently obtained;

2. That heretofore and on or between the 3rd day of October, 1930, and the 27th day of October, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sum of £131,000 as follows:

On the 3rd day of October, 1930, the sum of £30,000,
On the 14th day of October, 1930, the sum of £10,000,
On the 16th day of October, 1930, the sum of £20,000,
On the 16th day of October, 1930, the sum of £25,000,
On the 17th day of October, 1930, the sum of £40,000,
On the 27th day of October, 1930, the sum of £6,000,

knowing the same to have been fraudulently obtained;

3. That heretofore and on or between the 14th day of June, 1930, and on the 30th day of September, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, did receive from Broad Street Press Limited the sum of £242,500, knowing the same to have been fraudulently obtained;

39 4. That the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is a fugitive from the justice of England, Kingdom of Great Britain, and is now within the territory of the United States, and a warrant has been issued at Lon-

don, England, aforesaid, for the apprehension of said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, for the offenses herein charged;

5. That the crime with which the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is herein charged is an offense within the Treaties between the United States and Great Britain;

6. That the deponent's information and belief are based upon properly certified copies of the warrant of arrest issued in London and of depositions of witnesses received at the British Consulate General, Chicago, from the Secretary of State for Foreign Affairs in London, England, all of which are ready to be produced at the hearing of this cause.

GODFREY HAGGARD,
British Consul General.

Subscribed and sworn to before me this 25th day of May, A. D. 1931.

EDWIN K. WALKER,
United States Commissioner for the Northern District of Illinois, and Commissioner duly authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States, concerning the extradition of fugitives from justice of a foreign government under a treaty or convention between this and any foreign government.

Seal

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40 *The President of the United States of America*
To any Marshal of the United States To
The Deputies of any such Marshal
or Either of Them.

WHEREAS, a complaint has been made on oath under the Treaty between the United States of America and Great Britain, signed at Washington on the Ninth day of August, One Thousand Eight Hundred and Forty-two, the ratifications whereof were exchanged at London on the Thirteenth day of October, in the same year, and a convention supplementary to the said Treaty between the same high contracting parties, concluded at Washington on the Twelfth day of July, One Thousand Eight Hundred and Eighty-nine, the ratifications

whereof were exchanged at London on the Eleventh day of March, One Thousand Eight Hundred and Ninety; and the further convention supplementary to the said Treaty, concluded at Washington on the Thirteenth day of December, One Thousand Nine Hundred, the ratifications whereof were exchanged at Washington on the Twenty-second day of April, One Thousand Nine Hundred and One; and a further convention supplementary to the said Treaty, concluded at London on the Twelfth day of April, One Thousand Nine Hundred and Five, the ratifications whereof were exchanged at Washington on the Twenty-first day of December, One Thousand Nine Hundred and Six, before me, Edwin K. Walker, a commissioner appointed by the District Court of the United States for the Northern District of Illinois, and also a Commissioner especially appointed and authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States, concerning the extradition of fugitives from justice of a foreign government, under a Treaty or convention between this and any foreign government, for the apprehension and delivery up of certain offenders;

That heretofore and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the City of London, England, and within the jurisdiction of his Britan-
41 nic Majesty, one Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sums of Fifteen Thousand Pounds (£15,000) Sterling and Seventy Thousand Pounds (£70,000) Sterling, respectively, knowing the same to have been fraudulently obtained; that heretofore and on or between the 3rd day of October, 1930, and the 27th day of October, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press Limited, the sum of One Hundred and Thirty-one Thousand Pounds (£131,000) Sterling, as follows:

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On the 16th day of October, 1930, the sum of £20,000,
On the 16th day of October, 1930, the sum of £25,000,
On the 17th day of October, 1930, the sum of £40,000,
On the 27th day of October, 1930, the sum of £6,000,

knowing the same to have been fraudulently obtained: that heretofore and on or between the 14th day of June, 1930, and

the 30th day of September, 1930, at the aforesaid city of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press Limited, the sum of Two Hundred and Forty-two Thousand Five Hundred Pounds (£242,500) Sterling, knowing the same to have been fraudulently obtained;

That the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is a fugitive from the justice of England, Kingdom of Great Britain, and is now within the territory of the United States, and a warrant has been issued at London, England, aforesaid, for the apprehension of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, for the offenses herein charged; and that the crime with which the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is herein charged is an offense within the Treaties between the United States and Great Britain.

NOW, THEREFORE, WE COMMAND YOU FORTHWITH to take said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, and bring him before me, the said Commissioner, at my office
42 in Room ....., Federal Building, city of Chicago, state of Illinois, or before the nearest Justice, Judge or Commissioner in the District in which said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is apprehended, authorized to act in any proceeding for the extradition of fugitives from justice of a foreign government, as provided in Section 5270 of the Revised Statutes of the United States, in order that the evidence of the criminality of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, may be heard and considered and if deemed sufficient to sustain the charge that the same may be certified, together with a copy of the proceedings to the Secretary of State, that a warrant may issue pursuant to the Treaties.

WITNESS MY HAND AND OFFICIAL SEAL this 25th day of May, A. D. 1931.

EDWIN K. WALKER,
United States Commissioner and also a Commissioner especially appointed to execute the provisions of Title LXVI of the Revised Statutes of the United States for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivery up of certain offenders.

Seal

43 *The President of the United States of America To any Marshal of the United States To the Deputies of any such Marshal or Either of Them*

WHEREAS, a complaint has been made on oath under the Treaty between the United States of America and Great Britain, signed at Washington on the Ninth day of August, One Thousand Eight Hundred and Forty-two, the ratifications whereof were exchanged at London on the Thirteenth day of October, in the same year, and a convention supplementary to the said Treaty between the same high contracting parties, concluded at Washington on the Twelfth day of July, One Thousand Eight Hundred and Eighty-nine, the ratifications whereof were exchanged at London on the Eleventh day of March, One Thousand Eight Hundred and Ninety; and the further convention supplementary to the said Treaty, concluded at Washington on the Thirteenth day of December, One Thousand Nine Hundred, the ratifications whereof were exchanged at Washington on the Twenty-second day of April, One Thousand Nine Hundred and One; and a further convention supplementary to the said Treaty, concluded at London on the Twelfth day of April, One Thousand Nine Hundred and Five, the ratifications whereof were exchanged at Washington on the Twenty-first day of December, One Thousand Nine Hundred and Six, and before me, EDWIN K. WALKER, a Commissioner appointed by the District Court of the United States for the Northern District of Illinois, and also a Commissioner especially appointed and authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States, concerning the extradition of fugitives from justice of a foreign government, under a Treaty or convention between this and any foreign government, for the apprehension and delivery up of certain offenders; Dated 1931

That heretofore and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the city of London, England, and within the jurisdiction of his Britannic
44 Majesty, one Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sums of Fifteen Thousand Pounds (£15,000) Sterling and Seventy Thousand Pounds (£70,000) Sterling, respectively, knowing the same to have been fraudulently obtained; that heretofore and on or between the 3rd day of October,

1930, and the 27th day of October, 1930, at the aforesaid city of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press Limited, the sum of One Hundred and Thirty-one Thousand Pounds (£131,000) Sterling, as follows:

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On the 16th day of October, 1930, the sum of £25,000
On the 27th day of October, 1930, the sum of £40,000
On the 27th day of October, 1930, the sum of £6,000,

knowing the same to have been fraudulently obtained; that heretofore and on or between the 14th day of June, 1930, and the 30th day of September, 1930, at the aforesaid city of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press Limited, the sum of Two Hundred and Forty-two Thousand Five Hundred Pounds (£242,500) Sterling, knowing the same to have been fraudulently obtained;

That the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is a fugitive from the justice of England, Kingdom of Great Britain, and is now within the territory of the United States, and a warrant has been issued at London, England, aforesaid, for the apprehension of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, for the offenses herein charged; and that the crime with which the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is herein charged is an offense within the Treaties between the United States and Great Britain.

NOW, THEREFORE, WE COMMAND YOU FORTHWITH to take said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, and bring him before me, the said Commissioner, at my office in Room 878 Federal Building, city of Chicago, state of Illinois, or before the nearest Justice, Judge or Commissioner in the District in which said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is apprehended, authorized to act in any proceeding for the extradition of fugitives from justice of a foreign government, as provided in Section 5270 of the Revised Statutes of the United States, in order that the evidence of the criminality of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, may be heard and considered and if deemed sufficient to sustain the charge that the same may be certified, together with a copy

of the proceedings to the Secretary of State, that a warrant may issue pursuant to the Treaties.

WITNESS MY HAND AND OFFICIAL SEAL this 25th day of May, A. D. 1931. Dated 1931

EDWIN K. WALKER,
United States Commission and also a Commissioner especially appointed to execute the provisions of Title LXVI of the Revised Statutes of the United States for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivery up of certain offenders.

46 BEFORE EDWIN K. WALKER, Esq.,
United States Commissioner

In the Matter of the Application for Extradition of Harry Wise alias J. Factor alias Guest alias J. Walker, a fugitive from justice under the Treaty between the United States and Great Britain.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

GODFREY HAGGARD, his Britannic Majesty's Consul General at Chicago, Illinois, being first duly sworn, upon his oath deposes and says that he is informed and believes and thereupon states:

1. That heretofore and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the city of London, England, and within the jurisdiction of his Britannic Majesty, one Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sums of £15,000 and £70,000 respectively, knowing the same to have been fraudulently obtained;

2. That heretofore and on or between the 3rd day of October, 1930, and the 27th day of October, 1930, at the aforesaid city of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sum of £131,000 as follows:

On the 3rd day of October, 1930, the sum of £30,000

On the 14th day of October, 1930, the sum of £10,000
On the 16th day of October, 1930, the sum of £20,000
On the 16th day of October, 1930, the sum of £25,000
On the 17th day of October, 1930, the sum of £40,000
On the 27th day of October, 1930, the sum of £6,000,
knowing the same to have been fraudulently obtained;

3. That heretofore and on or between the 14th day of June, 1930, and the 30th day of September, 1930, at the aforesaid city of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, did receive from Broad Street Press Limited the sum of £242,500, knowing the same to have been fraudulently obtained;

47 4. That the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is a fugitive from the justice of England, Kingdom of Great Britain, and is now within the territory of the United States, and a warrant has been issued at London, England, aforesaid for the apprehension of said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, for the offenses herein charged;

5. That the crime with which the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is herein charged is an offense within the Treaties between the United States and Great Britain;

6. That the deponent's information and belief are based upon properly certified copies of the warrant of arrest issued in London and of depositions of witnesses received at the British Consulate General, Chicago, from the Secretary of State for Foreign Affairs in London, England, all of which are ready to be produced at the hearing of this cause.

GODFREY HAGGARD,
British Consul General.

Subscribed and sworn to before me this 25 day of May, A. D. 1931.

EDWIN K. WALKER,
United States Commissioner for the Northern District of Illinois, and Commissioner duly authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States, concerning the extradition of fugitives from justice of a foreign government under a treaty or convention between this and any foreign government.

48 Motion of respondent, John Factor, to dismiss complaint, and as reason why said motion should be sustained said defendant assigns the following, to-wit:

1. Said complaint and the allegations therein contained are not sufficient in law to maintain this action against this defendant.

EMBASSY OF THE
UNITED STATES OF AMERICA

[SEAL OF THE
UNITED STATES OF AMERICA]

I, CHARLES G. DAWES, Ambassador Extraordinary and Plenipotentiary of the United States of America in Lon-
49 don, hereby certify that the annexed papers being copies of the Warrant of Arrest, the Informations and Depositions on which the Warrant was granted, proposed to be used upon an application for the extradition from the United States of America of Harry Wise, alias J. Factor, alias Guest, alias J. Walker, charged with the crime of receiving certain monies knowing the same to have been obtained under circumstances which amount to misdemeanour, towit, conspiracy to defraud, contrary to Section 33(1) of the Larceny Act 1916, alleged to have been committed in Great Britain, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of Great Britain, as required by the Act of Congress of August 3, 1882.

CHARLES G. DAWES.

[SEAL
EMBASSY OF THE
UNITES STATES OF AMERICA
LONDON]

London, February 26, 1931.

In forwarding the annexed papers, to be used in support of an application for the surrender from the United
50 States of America of Harry Wise, otherwise J. Factor, otherwise Guest, otherwise J. Walker, charged with the

crime of receiving certain monies knowing the same to have been obtained under circumstances which amount to misdemeanour, to wit, conspiracy to defraud, contrary to Section 33(1) of the Larceny Act, 1916, committed in Great Britain. I hereby certify that, to the best of my knowledge and belief, the signature "W. R. Pryke" certifying to the correctness of the copies of the Warrant of Arrest, the Informations and Depositions on which the Warrant was granted is the signature of Alderman Sir William Robert Pryke, Baronet, one of His Majesty's Justices of the Peace for the City of London, having authority to issue and receive the same, and I further certify that such documents so certified by a Magistrate having jurisdiction in the place where the same were issued and taken, and authenticated by a Minister of State, and sealed with his official seal. would be received in evidence for similar purposes by the tribunals of Great Britain.

E. BLACKWELL,
Assistant Under-Secretary of State for the Home Department.

Whitehall.
24th February, 1931.

{SEAL SECRETARY OF STATE HOME DEPARTMENT}

Certified at the Foreign Office for Legalization of the Foregoing Signature. "E. BLACKWELL."

F. G. A. BUTLER,
Finance Officer of the Foreign Office.

{SEAL FOREIGN OFFICE}

London.
25th Feb. 1931.

CITY OF LONDON, *to wit:*

The Information of The Director of Public Prosecutions and the Deposition of ARTHUR WARD in support thereof
51 taken on oath this 10th day of November, 1930, being supplemental to the Information taken on oath on the
8th day of November 1930, before Alderman Howell at the

Guildhall Justice Room, before me, the undersigned, one of the Aldermen for the City of London, sitting at the Mansion House Justice Room upon an application for a Warrant against Arthur J. Klein for that he on divers days between the 1st day of September 1928 and the 1st day of November, 1930, conspired with ..... Walker, ... Wise, ... Moncrieff, ... Green, ... Guest, and ..... Spellan, and with other persons unknown to defraud such persons as should thereafter be induced to part with money to him the said Arthur J. Klein and the aforesaid persons, trading under the name of the Broad Street Press Limited, by false representations that they were then carrying on a genuine business as Stock and Share Brokers, against the Peace, etc.

And the said ARTHUR WARD on his oath saith:—

(1) I crave leave to refer to the aforesaid Information of the 8th day of November 1930, a copy of which is annexed hereto and is marked "A."

(2) I am informed and verily believe that the said Arthur J. Klein was buying and selling shares on behalf of Broad Street Press Limited. One of the said transactions concerned a block of 320,000 shares in the Asbestos and Holdings Trust Ltd. of the nominal value of 5/- each for an amount representing roughly 1/6 per share which were bought on behalf of Broad Street Press Limited from Asbestos Consolidated Mines of Rhodesia Limited through the agency
52 of one J. Brooks of 14, Copthall Avenue and on the 14th day of March 1930, the Asbestos Consolidated Mines of Rhodesia Limited acknowledged in writing by letter addressed to the said Arthur J. Klein at 14, Copthall Avenue the payment of £1,500 for 20,000 shares part of the above mentioned block of shares. At or about this time Broad Street Press Limited were selling the shares of Asbestos and Holdings Trust Limited to the clients mentioned in paragraph 3 of the Deposition of Cyril Thomas Newman annexed to the Information marked "A." Thereafter the Cash Book of Broad Street Press Limited shews the following payments to the said Arthur J. Klein:—

27th May, 1930,	£ 7,863.
26th June 1930,	£10,000.
30th June 1930,	£ 5,000.

(3) I have made inquiries and believe that the said Arthur J. Klein is a passenger on the S. S. "Olympic" bound for

New York, which is believed to be due to arrive at that Port on Tuesday, the 11th November, 1930.

ARTHUR WARD.

Taken and Sworn before me this 10th November, 1930.

(Sgd) W. R. PRYKE,
Alderman and Justice of the Peace, City of London.

"A"

CITY OF LONDON, *to wit:*

The Information of the Director of Public Prosecutions and the Depositions of CYRIL THOMAS NEWMAN and
53 ARTHUR WARD in support thereof, taken on oath this 8th day of November, 1930, before me the undersigned, one of the Aldermen for the City of London, sitting at the Guildhall Justice Room, upon an application for a Warrant against ..... Walker, ... Wise, ... Moncrieff, ... Green, ... Guest and ..... Spellan, for that they, on divers days between the 1st September 1928 and the 1st November 1930, conspired together and with other persons unknown to defraud such persons as should thereafter be induced to part with money to the said Walker, Wise, Moncrieff, Green, Guest and Spellan, trading under the name of the Broad Street Press Limited, by false representations that they were then carrying on a genuine business as Stock and Share Brokers.

Against the Peace, etc.

And the said CYRIL THOMAS NEWMAN on his oath saith:—

(1) I am an Examiner in the Department of the Official Receiver in Companies Liquidation. I have been enquiring into the affairs of the Broad Street Press Limited, and the facts hereinafter stated have come to my knowledge during the course of such enquiry and are to the best of my knowledge true and capable of proof.

(2) The Company was incorporated as a private Company on the 8th September 1928 with a nominal capital
54 of £5,000 divided into Ordinary Shares of £1 each. Albert Simon Joseph Osborne and Albert Paris were Directors, holding respectively 1,998 shares and 3,000 shares, J. H. Osborne, the Secretary, 1 share, and H. B. Coggins, a signatory,

1 share. I have seen and taken statements from the two Directors Osborne and Paris. They both state that in September 1928 they were introduced—neither can remember by whom—to a Mr. Walker. He asked them if they would like to be Directors of a Company; he did not mention the name. They were to be paid £100 a year, and their duties were to sign cheques or anything else they were told. These interviews were separate and neither Osborne nor Paris were known to each other at the time. On the 12th September 1928 they attended a meeting at the office of Mr. Elman of 27 Lincoln's Inn Fields, who was the solicitor to the Company. The said Walker was present, shares were then allocated, 1,998 to Osborne and 3,000 to Paris. Both say that they never paid anything for these shares. Osborne states that he used to attend at the office at 2 Broad Street Buildings daily for a few months for the purpose of signing cheques. He used to see there the said Walker at times and the said Moncrieff, who was the Manager of the business and paid him his salary weekly. Osborne says that Walker told him he should have £4 a week at first instead of £2, and during the last 18 months he has been receiving £6. He also occasionally attended Board Meeting at the office of Mr. Elman, when Walker sometimes was present, and when he was he did all the talking; at other times only himself, Elman and Paris, but neither he nor Paris took any part whatever in the management of the business or knew anything about it. Paris states that he never attended at 2 Broad Street Buildings at all. Cheques in blank in large numbers were sent to him to sign, and he did sign them and return them to 2 Broad Street Buildings.

(3) The Company published a weekly financial paper which for the first few months was called "The City News and Stock Exchange Observer," of which Osborne was described as Editor, although he says he took no part whatever either in editing or in publishing it. In June 1929 the name of the paper was changed to "Finance and Stock Exchange Observer." It appeared under that name up to the last published edition in October, and the Editor appears in the issue of the 11th September 1929 as "Norman D. Spenser." This, so far as I have been able to discover, is an entirely fictitious name. Up to about March 1930 the Company appears to have advised clients in the buying and selling of reasonably good securities. In March 1930 clients were widely circularised

to the effect that Spenser, who was always on the look-out for shares which he could recommend, was completing his investigations regarding shares which in his opinion were good for considerable capital appreciation; that the shares would shortly be introduced to the London Stock Exchange at about 7s.6d. per share and that he would be making arrangements to secure the shares for clients at 5/- a share; and clients were asked to fill in a form enclosed stating the number of shares they wished to be secured for them. A few days afterwards the clients were informed that the shares were Asbestos Holdings Trusts, Limited, and that they had been purchased for them. Other shares which clients were advised to buy, being told that they were certain to go up very largely in value and that they were perfectly safe and could be well recommended, were shares in the Vulcan Copper Mines Limited and Rhodesia Border Mining Corporation Limited. Large numbers of clients bought shares in these three Companies. A very large number of them had previously bought shares recommended by the Broad Street Press Limited in perfectly sound concerns which had shewn a profit
56 when sold and, therefore, clients were more easily persuaded to invest in the three companies already mentioned. In many cases clients who had bought shares in solid concerns and had been told that they had made a profit refused to buy any further shares and asked for the profit they had made to be sent to them. In spite of this, in numerous cases the Broad Street Press Limited informed them that they had bought shares for them in one or other of the three Companies already mentioned, and they were unable to get any redress. I have received numerous complaints from persons who have bought shares on the strength of the representations of the Broad Street Press Limited and its Agents.

(4) I have, from an inspection of the Company's banking account, discovered that between the 3rd September 1930 and the 16th October 1930 there are payments through the Company's account at Barclays Bank, Bishopsgate, to the said Wise totalling £375,000, and further payments to the said Wise through the Midland Bank, Gray's Inn Branch, totalling £84,000. This money has now all disappeared.

(5) I have been in communication with Messrs. Mullens, Marshall, Steer, Lawford & Co., Government Brokers, who state with regard to the Asbestos Holdings Trust Limited, the

Rhodesia Border Mining Corporation Limited and the
57 Vulcan Copper Mines Limited that there have never been any dealings on the Stock Exchange in the shares in any of these Companies, and that the shares are entirely worthless.

(6) I have found among the Company's papers:—

(*a*) one letter addressed to Jack Factor from Mr. Hermann of Chicago.

(*b*) a few papers referring to Spellan,

(*c*) seven slips addressed to H. Green from Ashford & Co. of Tokenhouse Yard, relating to purchase of shares.

(Sgd.) C. T. NEWMAN.

And the said ARTHUR WARD on his oath saith:—

(1) I am a Detective-Inspector of the City Police and have been making inquiries into this case at the request
58 of the Director of Public Prosecutions. The facts hereinafter mentioned have come to my knowledge during the course of such inquiries and are to the best of my knowledge true and capable of proof.

(2) The premises at 2 Broad Street Buildings consisted of seven offices at a rental of £410 per annum on a seven years lease from the 29th September 1928. The offices originally were leased by the said Wise, who prior to the 29th September 1928 was carrying on the business of the "City News and Stock Exchange Observer." He transferred his lease of the premises to the Broad Street Press Limited in September 1928.

(3) I have seen and taken a statement from a Miss Cunningham, who is employed as a shorthand-typist by the Broad Street Press Limited, on the 5th April of this year. She was engaged by the said Moncrieff, her duties mostly were typing letters, from dictation, to clients about investments in perfectly sound securities. She worked most of her time at 2 Broad Street Place, which is opposite to Broad Street Buildings. She states that she occasionally went over to 2 Broad Street Buildings and that the principals engaged there were the said Moncrieff, the said Green, the said Guest and the said Spellan.

(Sgd) ARTHUR WARD.

41. INDICTABLE OFFENCES.—WARRANT.

CITY OF LONDON, *to wit:*

To each and all of the Constables of the Police Force for the City of London and the Liberties thereof, and to
59 all other Constables and Peace Officers in the said City and Liberties.

Whereas, ARTHUR J. KLEIN (hereinafter called the "Accused") has this day been charged upon Oath before the undersigned one of the Aldermen of the City of London, being one of His Majesty's Justices of the Peace in and for the said City and the Liberties thereof, for that the said Accused, in the said city, on divers days between the 1st day of September 1928 and the 1st day of November 1930 did conspire together with other persons, to wit, ... Walker, ... Moncrief, ... Guest, ... Wise, ... Green, ... Spellan, and with other persons unknown to defraud such persons as should thereafter be induced to part with money to the said ..... Walker, ... Moncrief, ... Guest, ... Wise, ... Green, ... Spellan, trading under the name of the Broad Street Press Limited, by false representations that they were then carrying on a genuine business as Stock and Share Brokers, against the Peace, &c.

There Are Therefore to command you, in His Majesty's name, forthwith to apprehend the said Accused, and to bring him before me, or some other of His Majesty's Justices of the Peace for the said City, at the Guildhall Justice Room in the said City, to answer unto the said Charge, and to be further dealt with according to Law. Herein fail not.

Given under my Hand and Seal this 10th day of November, 1930, at the Mansion House Justice Room aforesaid.

W. R. PRYKE (L. S.)
Alderman & J. P. for the City of London.

CITY OF LONDON, *to wit:*

I the undersigned, one of the Aldermen of the City of London and one of the Justices of the Peace acting in and for the said City, sitting at the Guildhall Justice Room, Hereby Certify that the written and typewritten matter contained in the foregoing nine pages of paper is a true copy of the Information of the Director of Public Prosecutions and the deposition of Arthur Ward in support thereof, laid and sworn before me on the 10th day of November, 1930, and the exhibit marked "A," and of the Warrant issued by me thereon for the apprehension of Arthur J. Klein.

Given under my Hand and Seal at the Guildhall Justice Room aforesaid this 19th day of November, 1930.

W. R. PRYKE,

SEAL
SECRETARY OF STATE
HOME DEPARTMENT

SEAL
ALDERMAN
JUSTICES OF THE PEACE
GUILDHALL JUSTICE ROOM
CITY OF LONDON

EMBASSY OF THE
UNITED STATES OF AMERICA

SEAL OF THE
UNITED STATES OF AMERICA

I, CHARLES G. DAWES, Ambassador Extraordinary and Plenipotentiary of the United States of America in London, England, hereby certify that the annexed papers being copies of the Warrant of Arrest, the Information and Depositions on which the Warrant was granted, proposed to be used in support of an application for the extradition from the United States of America of Harry Wise, alias J. Factor, alias Guest, alias J. Walker, charged with the crime of receiving certain monies knowing the same to have been obtained under circumstances which amount to misdemeanor, to wit, conspiracy to defraud, contrary to Section 33 (1) of

the Larceny Act, 1916, alleged to have been committed in Great Britain are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of Great Britain, as required by the Act of Congress of August 3, 1882.

CHARLES G. DAWES,

SEAL
EMBASSY OF THE
UNITED STATES OF AMERICA
LONDON

London, December 13, 1930.

In forwarding the annexed papers, to be used in support of an application for the surrender from the United
63 States of America of Harry Wise, otherwise J. Factor, otherwise Guest, otherwise J. Walker, charged with the crime of receiving certain monies knowing the same to have been obtained under circumstances which amount to misdemeanour, to wit, conspiracy to defraud, contrary to Section 33(1) of the Larceny Act, 1916, committed in Great Britain, I hereby certify that, to the best of my knowledge and belief, the signature "Isidore N. Jacobs" certifying to the correctness of the copies of the warrant of arrest, the information, and depositions on which the warrant was granted, is the signature of Alderman Isidore Nathan Jacobs, one of His Majesty's Justices of the Peace for the City of London, having authority to issue and receive the same, and I further certify that such documents so certified by a Magistrate having jurisdiction in the place where the same were issued and taken, and authenticated by a Minister of State, and sealed with his official seal, would be received in evidence for similar purposes by the tribunals of Great Britain.

E. BLACKWELL,
Assistant Under-Secretary of State for the Home Department.

Whitehall.
11th December 1930.

SEAL
SECRETARY OF STATE
HOME DEPARTMENT

Certified at the Foreign Office for Legalization of the Foregoing Signature. "E. BLACKWELL"

S. GASELEE,
Librarian and Keeper of the Papers for the Secretary of State for Foreign Affairs.

{ SEAL
{FOREIGN OFFICE}

London.
12th Dec. 1930.

CITY OF LONDON, *to wit:*

The information of The Director of Public Prosecutions and the Depositions of CYRIL THOMAS NEWMAN, WILLIAM JOSEPH WALLIS HILL, GLADYS MARION STACY, JOHN THOMAS HEDLEY, FREDERICK WILLIAM TURNER, FRANK STANLEY COCHRANE, AUGUSTUS YOUNG, ROBERT HENDERSON HAMILTON, BENJAMIN BRYCHAN WILLIAMS, CECIL GATES, ROBERT JAMES TRIVETT, FREDERICK WILLIAM MEMORY, FREDERICK WILLIAM JAN, PHILIP NEVILLE D'ESTERRE TAYLOR, LESLIE WILLIAMS, MARGARET WOOLLENDS, FLORENCE FARNCOMBE, LEONARD VICTOR SHORTLANDS, ERNEST FRANK WEST, JANE CRAWFORD CUNNINGHAM, JAMES RICHARDS FRENCH and CLAUD JAMES MATTHEW GWATKIN in support thereof taken on oath this 10th day of December, 1930, before me, the undersigned, one of the Aldermen of and a Justice of the Peace for the City of London, sitting at the Guildhall Justice Room, upon an application for a Warrant against HARRY WISE, otherwise J. FACTOR, otherwise ..... GUEST, otherwise J. WALKER:

(1) For that he on the 14th day of July 1930 and the 26th day of August 1930, received from the Broad Street Press Limited the sums of £15,000 and £70,000 respectively, knowing the same to have been obtained under circumstances which amount to a misdemeanour, to wit, conspiracy to defraud;

(2) For that he on the 3rd day of October 1930, received the sum of £30,000, on the 14th day of October 1930, received the sum of £10,000, on the 16th day of October 1930, received the sum of £20,000, on the 16th day of

October 1930, received the sum of £25,000, on the 17th
66 day of October 1930, received the sum of £40,000, and on the 27th day of October, 1930, received the sum of £6,000, in each case from the Broad Street Press Limited, knowing the same to have been obtained under circumstances which amount to a misdemeanour, to wit, conspiracy to defraud; and

(3) For that he on divers days between the 14th day of June, 1930 and the 30th day of September, 1930, received the sum of £242,500 from the Broad Street Press Limited, knowing the same to have been obtained under circumstances which amount to a misdemeanour, to wit, conspiracy to defraud:

In each case contrary to Section 33(1) of the Larceny Act, 1916.

And this Deponent CYRIL THOMAS NEWMAN on his oath saith:—

67 I crave leave to refer to an Information sworn by me before Alderman Howell, one of the Aldermen and Justices of the Peace in and for the City of London, sitting at the Guildhall Justice Room, on the 8th day of November 1930, and in addition thereto to say that on the 24th November 1930 an Order of the High Court of Justice was made for the compulsory winding-up of the Company known as Vulcan Copper Mines, Ltd. I have had the conduct of the affairs relating to the winding-up of this Company and from the documents, data and books obtained by the Official Receiver, I find there is no evidence that this Company owned any property in South Africa. The only asset at present known of the Vulcan Copper Mines Limited is cash at Bankers amounting to £28,303. 2. 9 which sum was received by this Company from the Broad Street Press Limited for the acquisition of shares which were later sold to the general public at enhanced prices. I also find from the examination of the books of the Vulcan Copper Mines Limited and of the Broad Street Press Limited that Broad Street Press Ltd. had sold to the public shares which they had acquired from Permanent Investments Ltd. (a Company registered in Guernsey of which Frederick Newbery is one of the two directors, and which company I verily believe is controlled entirely by the said Frederick Newberg) being shares agreed to be allotted to Permanent Investments Ltd. by Vulcan Cop-

per Mines Ltd. as part consideration for the purchase of the properties which the Company purported to possess at the time the shares were sold to the public. The said Frederick Newbery has now been arrested in London and charged with Spellen, Moncrieff and Wise with conspiracy to defraud such persons as should be induced to part with money to the Broad Street Press Ltd. for the purchase of shares in the said Vulcan Copper Mines Ltd., and that during my further in-
68 vestigations of the affairs of the Broad Street Press Limited (in liquidation) I have ascertained that the sums referred to in the first and second charges to this Information were paid by cheques drawn in favour of H. Wise (*i. e.* the said Harry Wise, alias Factor alias Guest alias Walker) upon the banking account of the Broad Street Press Limited at Barclays Bank Limited, 232 to 238, Bishopsgate, London E. C. 2., which sums were in due course credited to the banking account of the said Harry Wise at the North of Scotland Bank Limited, 3 & 4, Lothbury, London E. C. 2., and that the amount referred to in the third charge to this Information was paid by cheque drawn in favour of H. Wise (*i. e.* the said Harry Wise, alias Factor, alias Guest, alias Walker) by cheques upon the banking account of the Broad Street Press Limited at Midland Bank Limited, 49, High Holborn, London W. C. 1. and in due course were credited to the account of the said Harry Wise at the said North of Scotland Bank. The cheques by which these payments were made are now in my possession, photostat copies of which are Exhibit Nos. 4, 5 and 6.

C. T. NEWMAN.

And this Deponent WILLIAM JOSEPH WALLIS HILL on his oath saith:—

I am an Examiner in the Department of the Official Receiver in Companies Liquidation, London; I have been en-
69 quiring into the affairs of the Rhodesia Border Mining Corporation Limited, and the facts hereinafter stated have come to my knowledge from an inspection of the books, papers and other documents of the Company during the course of my enquiry. An Order of the High Court of Justice, in London was made upon the 24th November 1930 for the compulsory winding-up of the Rhodesia Border Mining Corporation Ltd., and, as a result of my investigation of

the books, papers and other documents of the Company, I find that there is no evidence that this Company own any property in South Africa, the only known asset of the Company is cash at bankers (now in the custody of the Official Receiver in Companies Liquidation) amounting to £29,413-18-4 which sum appears from the books of the Rhodesia Border Mining Corporation Ltd to have been received from the Broad Street Press Ltd for the acquisition of shares which shares were later sold to the public at enhanced prices. I also find from a further examination of the books, papers and other documents of the said Corporation and of the Broad Street Press Ltd, whose affairs are also in the hands of the Official Receiver in Companies Liquidation, London, that the Broad Street Press Ltd had sold to the public shares which they had acquired from the Pretoria Mining Estates Company Limited, a Company registered in the Island of Guernsey, of which Frederick Newbery is one of the Directors, which Company I verily believe is conducted entirely by the said Frederick Newbery. These shares were agreed to be allotted to the Pretoria Mining Estates Co. Ltd by the Rhodesia Border Mining Corporation Ltd as part consideration for the purchase of the properties which the latter Company purported to possess at the time the shares were sold to the public, these shares being what are commonly known as "vendor shares", and so far as is known they are worthless. As a result of my further enquiries, I have ascertained that there have never been any dealings on the Stock Exchange of London in the shares of the Rhodesia Border Mining Corporation Ltd. It is within my knowledge that the said Frederick Newbery has now been arrested in London and charged with Spellen, Moncrieff and Wise with conspiracy to defraud such persons as should be induced to part with money to the Broad Street Press Ltd for the purchase of shares in the said Rhodesia Border Mining Corporation Ltd.

W. J. WALLIS HILL.

And this Deponent GLADYS MARION STACY on her oath saith:—

I am married and reside at The Bury, Epping, Essex.

For the past six months I have regularly received, per post, gratis copies of "Finance", a financial journal pub-

lished by the Broad Street Press Ltd., 2, Broad Street Buildings, London, E. C.

Sometime early in July, 1930, I received a letter—since destroyed—signed by Norman D. Spencer, the Editor of "Finance" as above, in which he suggested that I buy
71 "Swears & Wells" ordinary shares, as they then stood at 15/-, and were likely to rise, and without any further communication from him, I instructed him to purchase £300 worth of the said shares, which he did.

On or about 30th July 1930, I received a letter, in which Norman D. Spencer stated that "Swears & Wells" ordinary shares stood at 19/- and would certainly go higher, and he also referred to a Rhodesia Copper Share of 10/- par value, which would shortly be introduced on the London Stock Exchange at a price of not less than 15/-.

On the 31st July 1930, I received the prepaid telegram signed "Finance", and which stated that "Swears & Wells" were then worth 21/- each, and advising me to sell my holding—400—take what profit I had made, and re-invest my original capital (£300) in Rhodesia Border Mining Corporation, Ltd., at 10/- each. I immediately replied giving instructions to re-invest as suggested after selling my holding of "Swears & Wells." I later received the Contract Note which shows that the 400 "Swears & Wells" ordinary realized £420 O. O, and on or about the 15th August, 1930, I received a letter together with a Statement of Account and a cheque for £119. 5. 6 which represented my profit on the deal. This cheque was signed by "A. S. J. Osborn" and "A. Paris", but I do not remember what Bank it was drawn upon.

I later received another Contract Note, but as I felt
72 uneasy I wrote to Norman D. Spencer, asking him to supply me with particulars of the Company in which I had invested my money, and in reply I received a letter which stated that there was no need for my uneasiness.

On or about 15th August, 1930, I received a letter in which Spencer stated that a group of financiers were endeavoring to obtain control of "Rhodesia Border Mining Corporation Ltd.," and were offering 15/- per share, and impressing upon me not to sell my holding under any circumstances, as I later may receive £2 per share.

On the 20th August, 1930, Spencer phoned me and said he had secured an option upon 2,000 "Rhodesia Borders"

A. No about the profits all going to Gerber's, no matter where the customer bought.

With respect to the testimony of the witness Abraham Aaron:

(95) Q. What did the proprietor of the market say?

A. He said I can't give you poultry.

(96) Q. He said that?

A. I said "Why don't you want to give me poultry?" and he said "When I give it to somebody else poultry, to other butchers, not his butchers, the union sends me in a man; I have to pay for that—he sends in an extra man; that is why I can't give you poultry."

With respect to the testimony of the witness Israel M. Lerner:

(97) Q. In that capacity have you ever conducted investigations of combinations among the poultry marketmen of Greater New York?

A. I have.

(98) Q. What were the names of the organizations that you investigated?

A. One was a corporation then known as the Commu- [fol. 166] nity Live Poultry Corporation and another the Square Deal Live Poultry Corporation and, if my memory serves me right, I think there was a third by the name of The Square Deal Corporation, and also the Commission merchants at West Washington Market.

(99) Q. At what time did you investigate the Community Live Poultry Corporation?

A. If you will let me—I believe it was sometime in the year 1925 or 1926. My records that I brought will give it.

(100) Q. Who were the members of the Live Poultry Corporation, the Community Live Poultry Corporation, what class of people?

A. I know of my own knowledge that the persons who were interested in the Community Live Poultry Corporation were owners of slaughterhouses.

(101) Q. In what section of the city?

A. I believe they operated in the territory known as Williamsburg, in the Borough of Brooklyn, City of New York.

(102) Q. Could you estimate the percentage of markets in Williamsburg who were members of the Community Live Poultry Corporation?

A. I should say about 95 to 98 per cent.

(103) Q. What other practices besides price fixing did you investigate?

A. I investigated complaints that some of the slaughterhouse people who finally found themselves as members of the Community Live Poultry Corporation that they were intimidated and forced to give up their individual places of business conducted by them as slaughterhouses, turn their places of business over to the Community Poultry Corporation, become one of its managers and known as a branch number under threat of not being able to get any poultry from the producers or the commission marchants at West Washington Market.

(104) —. Were there any other practices that you investigated in connection with the Community Live Poultry Organization?

A. I investigated a complaint that the organizers of the Community Live Poultry Corporation had made an arrangement with the commission merchants of West Washington Market whereby it was understood that no poultry should be sold to any marketman or rather any slaughterhouse man in the vicinity unless he was a member of the Community Live Poultry Corporation, and I investigated several complaints whose names are in the minutes, and I have the minutes here of those—I had a talk with the members of the Community Live Poultry Corporation and with the commission merchants and inquired from the commission merchants why they had refused to sell poultry to some of the slaughterhouse keepers—after I went into this investigation quite thoroughly, after several meetings, I commenced an action in the Supreme Court of Kings County to dissolve the corporation known as the Community Live Poultry Corporation on the ground that they are—on the ground that it was a price fixing combination and in violation of the Donnelly Act, and the action came on for trial before Mr. Justice Callahan and a jury on certain questions. The result was a verdict dissolving the corporation on the ground that the corporation was a corporation in restraint of trade and on the ground that it was a price fixing combination.

[fol. 167] (105) Q. What percentage of the slaughter-house markets of Brownsville would you say were members of the Square Deal?

A. Probably 88% or 89%.

(106) Q. Had you received complaints against the commission men prior to your investigation?

A. I did.

(107) Q. What complaints had you received?

A. Well, all commission merchants were charging the same price and very frequently premiums were fixed on poultry which were no better than the other and if they did not want to pay the premiums, you couldn't get the poultry, particularly when there was a shortage.

(108) Q. What evils did you investigate there; what practices did you investigate?

A. I investigated the practice of fixing prices for all poultry without competition.

(109) Q. What were the practices?

A. The practices of creating a superficial shortage of poultry in order to boost prices and increase premiums on poultry.

With respect to the testimony of the witness Rubay:

(110) Q. What did Mr. Seewald say to you?

A. He told me—he put up a price, I bought the poultry and he put up a price. He never put me no price on poultry because I used to pay quotation price.

With respect to the testimony of Jacob Miller:

(111) Q. Do you know what that association is?

A. That is a combination of—they all have one head, they should charge one price and how to rule the business.

(112) Q. Do you know who the members of that association are?

A. Bronx and Harlem Live Poultry Dealers.

(113) Q. Have any of the defendants in this case told you anything about this association?

A. Not the defendants only.

With respect to the testimony of the witness Kalman Gordon:

(114) Q. Can you tell us what it says?

A. Yes.

(115) Q. How did you get this photograph?

A. Before I made a photograph of it.

(116) Q. Just what did the workman say?

A. The workman came over to the market where I fired him, he came over to it where I fired him.

[fol. 168] With respect to the testimony of the witness Benjamin Shair:

(117) Q. Why were you charging the high prices in September and October in 1931?

A. In September and October we charged the high prices because in September that was a holiday week and I did charge him a little more because it is a holiday week, and I got big expenses, and I got to get more for my poultry to cover my expenses.

III. The Court erred in refusing to allow counsel for the defendants to ask the following questions of the witness Abraham Feivelson, over counsel's exceptions duly taken thereto:

(1) Q. Did Rosenfeld, Benjamin Rosenfeld of 80 Jefferson Street sign the paper that you have in your hand?

(2) Q. Was there a hearing and discharge——

(3) Q. Did your rabbinical board give a decision at that time?

(4) Q. Did representatives of the Schochtim Union sign that paper?

(5) Q. Was that paper written by you?

(6) Q. Did Mr. Rosenfeld submit a dispute that he then had with a schochet of the Schochtim Union for decision by the rabbinical board?

(7) Q. Can you translate that paper you have in your hand into English?

(8) Q. You say the time he came to you was in either September or October, 1926?

(9) Q. Do you recall what the dispute was between Benjamin Rosenfeld and Schochet Possman at that time that you sent that letter to the Schochtim Union, do you recall that?

(10) Q. Was the dispute between Possman and Rosenfeld submitted to the rabbinical board for decision?

(11) Q. Was any question with respect to the kind of business that Benjamin Rosenfeld conducted in his market ever submitted to the rabbinical board in 1926?

IV. The Court erred in making the following Findings of Fact:

(1) "1. The Greater New York Live Poultry Chamber of Commerce, hereinafter referred to as the Chamber of Commerce, is an association of poultry marketmen doing business in the Metropolitan Area, comprising the City of [fol. 169] New York and those portions of the State of New York and New Jersey situated within thirty miles of the boundaries of the City of New York."

(2) "2. Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, hereinafter referred to as Teamsters' Union, is a labor union comprising workmen engaged in handling, crating, and loading live poultry at West Washington Market and the New York Central Railroad Terminal, and trucking such poultry from the railroad terminals and West Washington Market to the various poultry markets of the Metropolitan Area. Defendants Arthur Herbert and Harry Schomer are delegates, and David Kaufman is business representative of the Teamsters' Union."

(3) "6. Defendants Max Keslin, Morris Markman (alias "Nigger"), Julius Rosenstein, Murray Rosenstein, Sidney Rosenstein, Aaron Weissler, Meyer Weiss, Charles Gershowitz, Abe Newman, Carl Fireston, Jacob (Joe) Mast, Michael Lax, Sam Lipkin, John J. Conlin and Hyman Fishman were employed by the Chamber of Commerce and by defendant marketmen and union delegates to enforce the agreement to allocate customers in the several districts."

(4) "8. It was agreed and understood by defendants that the money collected was to be used: (a) to pay small marketmen and poultry dealers weekly sums in return for their promise to refrain from engaging in a wholesale business, that is, selling poultry to butchers and dealers; (b) to maintain and enforce a system of allocating customers (retail dealers and butchers) among the various marketman, by hiring men to spy upon, report, threaten, and obstruct marketmen, retail dealers, and butchers who did not abide by the allocation agreement; (c) to prevent retail dealers and butchers from purchasing at sources other than the markets to whom they were allocated, by hiring men to spy upon and obstruct such dealers and butchers and by pay-

ing money to marketmen in return for their promises to refuse to sell to butchers and dealers; (d) to prevent marketmen from selling to retail dealers and butchers not allocated to them; (e) to prevent recalcitrant marketmen, poultry dealers, or butchers from obtaining poultry in West Washington Market, at the railroad terminals in New York and New Jersey, or at any sources whatever, either within or without the State of New York; and (f) to bribe public officials charged with the enforcement of anti-trust laws."

(5) "11. Marketmen were told to advance their prices, and were occasionally told by leaders of the respective districts what price to charge. The prices were advanced materially from June, 1927 until August, 1928. Whereas marketmen had charged 3¢ and 4¢ per pound above the prices which they paid to receivers before June, 1927, they thereafter concertedly charged 6¢, 8¢, 10¢ and as much as 15¢ and 18¢ above the prices which they paid to receivers."

(6) "13. The collections aggregated approximately $1,000,000 per year and continued for more than one year, commencing in June, 1927, and lasting until at least August 20, 1928, when a criminal information was filed against 64 individuals, 4 associations, and one corporation, 52 of whom are defendants in the present case. The sums collected in the several districts were several times as large [fol. 170] as the amount paid to Benjamin Simon. Large sums of the fund collected were used to buy the competition of small marketmen and poultry dealers, who agreed not to sell to retail poultry dealers and butchers. Such payments to small marketmen ranged from $50 to $250 per week. Substantially all of the defendant marketmen were either paying money to the collectors or receiving payments from them. The payments to marketmen aggregated many thousands of dollars per week."

(7) "15. The plan to allocate customers, collect 1¢ per pound, raise prices, and prevent recalcitrant marketmen, poultry dealers, and butchers from obtaining poultry from West Washington Market, the railroad terminals and other points outside the City of New York was carried out by defendants."

(8) "21. When the success of the conspiracy was threatened by importations of poultry from Philadelphia and other distant cities, marketmen and drivers of interstate

truck loads were threatened by defendant union delegates and marketmen with violence unless they discontinued. The president of the Chamber of Commerce accompanied a delegate of the Chauffeurs' Union to Philadelphia and ordered a poultry commissionman there not to ship poultry to New York marketmen without the Union's consent."

(9) "22. When retail dealers, driven by extortionate prices charged them, attempted to buy in New Jersey, they were followed and spied upon by defendants employed for that purpose, and in some instances forceably brought back to the marketmen to whom they had been allocated. New Jersey marketmen who persisted in selling them were cut off from their supplies of poultry in West Washington Market, New York."

(10) "26. The Chamber of Commerce, the Teamsters' Union and the Schochtim Union have all continued in existence up to the time of the filing of the amended petition, April 16, 1390, and thereafter."

(11) "27. The conspiracy described in the amended petition continued in existence up to the time of filing the amended petition April 16, 1930, and for at least eleven months thereafter."

(12) "28. In June, 1929, the defendant marketmen of the East Side organized the L. W. Credit Association for the purpose of restricting competitive sales, allocating poultry dealers and butchers among them, raising prices, and restraining free competition in the sale of live poultry. So-called "watchers" or "chargers" were placed by the L. W. Credit Association in the several markets of the East Side District. Said "watchers", in pursuance of the plan to allocate customers and advance prices recorded the weight of the poultry sold by the marketmen to each poultry dealer and butchers, and transmitted said reports to the L. W. Credit Association. The several marketmen of the East Side were allotted a specific quota of sales per week. For every pound of poultry sold in excess of the quota each marketman was required to pay 4¢ a pound to the L. W. Credit Association; for each pound under his quota for a particular week, each marketman was entitled to receive [fol. 171] 4¢ a pound from the L. W. Credit Association. For the purpose of coercing adherence to the L. W. Credit Association, delegates of the Teamsters' Union required

one marketman to hire additional union employees, until he had "straightened out" with the Association. An East Side poultry dealer was prevented by an officer of the L. W. Credit Association from purchasing poultry in Brooklyn. The L. W. Credit Association continued in existence until a few weeks before the commencement of the criminal trial under indictment No. C. 61-824, in October, 1929."

(13) "29. In February, March, April and May, 1930, Aaron Steinberg was prevented by defendants from purchasing and obtaining delivery of poultry from marketmen in New York, from receivers in West Washington Market, from receivers at the New York Central Terminal, and New Jersey terminals, from Philadelphia, from Elizabeth, N. J., and from Lincoln, Nebr. Delegates of the Teamsters' Union and of the Shochtim Union attempted to coerce Steinberg to employ more union men than his business warranted and prevented others from selling and delivering poultry to Steinberg in interstate commerce. As part of their plan to prevent Steinberg from obtaining poultry in interstate commerce, defendants threatened and assaulted Steinberg's employees, caused the destruction of his poultry truck, and prevented the National Box Company of Newark, N. J., from delivering empty coops for the transportation of poultry in interstate commerce to Steinberg's market. Defendant marketmen cooperated with the delegates of the Teamsters' Union and the Shochtim Union to prevent Steinberg from obtaining poultry. The activities of defendants with relation to Aaron Steinberg in February, March, April and May of 1930 constituted a continuance of the conspiracy described in the amended petition and a threat of future violations of the Sherman Antitrust Act on the part of defendants."

(14) "30. Barney Hecht was prevented by defendants from obtaining poultry from receivers in West Washington Market in July, 1930. He was prevented by defendants from obtaining poultry at the New York Central Terminal in March, 1929, and in Newark, N. J. in March, 1929."

(15) "31. In March, 1931, marketmen in Passaic, N. J. were prevented from obtaining poultry from receivers in Newark, N. J., because they had sold at prices approximately 4¢ above the price paid to receivers, whereas com-

peting marketmen were charging 10¢ or 12¢ above the price charged by the receivers; and were warned by defendant Max Keslin in March, 1931, that they would be unable to obtain poultry in West Washington Market if they sold to a designated person."

(16) "32. Alexander Pearlman and Abraham Pearlman, marketmen, were prevented by defendants from obtaining poultry at the New York Central Terminal and at West Washington Market in December, 1929."

(17) "33. Marketmen were required in 1931 by delegates of the Teamsters' Union and of the Shochtim Union to employ more workmen than their business warranted. Members of the Teamsters' Union and of the Shochtim Union forbade marketmen to sell wholesale."

[fol. 172] (18) "35. From September 19, 1931 to some time in November, 1931, when publicity was given to the fact that an injunction suit against defendants would commence on November 16, 1931, butchers, in Coney Island, Borough Park, Bensonhurst, Bronx, and Harlem, were concertedly charged by marketmen in said districts prices in excess of the prices which had been charged prior to September 19, 1931. Prior to said date butchers paid marketment 3, 4 and 5¢ above the prices which the marketmen paid to the receivers. After September 19, 1931, butchers were charged 8 to 12¢ above the prices paid by marketmen to receivers. During said period of time marketmen in said districts refused to sell butchers who had been dealing with other marketmen. In at least one instance defendant marketmen agreed upon high prices to be charged on the succeeding day. During said period of time marketmen in said districts frequently told butchers that they could not sell them because of a combination or agreement among the marketmen. Marketmen with whom butchers had been regularly dealing, frequently told the butchers that if they bought elsewhere, the profits would revert back to the regular marketmen."

(19) "36. Defendants sold only reluctantly to butchers who had not been dealing with them regularly, and admitted that they would be given trouble by the labor unions and by other marketmen if they were discovered selling to such butchers. Members of the labor unions interfered with such sales to butchers. Marketmen in said districts

were accused by butchers of overcharging, and in repeated instances gave rebates of 1, 2 and 3¢ a pound to partially offset the high prices charged."

(20) "37. In August, 1931, the Live Poultry Slaughter House Association, comprising most of the poultry marketmen of the Metropolitan Area, was formed to succeed the Live Poultry Protective Dealers Association, which comprised a great number of retail marketmen and a smaller number of wholesale marketmen. The Live Poultry Slaughter House Association realizes an income from the same source as the Chamber of Commerce, namely, the assignment of 10¢ on each empty coop returned by marketmen to Bernstein & Sons and the New Jersey Coop Company, which corporations supply coops for the trucking of poultry from the railroad terminals to the various markets in the Metropolitan Area. Some of defendant marketmen who are members of the Live Poultry Slaughter House Association have manifested a disposition to use the Association as an instrumentality for continuing the conspiracy described in the amended petition."

(21) "38. The Harlem and Bronx Live Poultry Board of Trade, organized in the fall of 1931, comprised most of the marketmen doing business in Harlem and Bronx. The members agreed not to sell on credit to poultry dealers and butchers who did not produce receipted bills showing full payment to marketmen with whom said poultry dealers and butchers had last dealt. By the custom of the trade poultry dealers and butchers pay their bills only once each week, paying on Monday morning for all poultry bought during the previous week. Poultry dealers and butchers, under the restrictions imposed by the Harlem and Bronx Live Poultry Board of Trade, were not to be permitted to change marketmen during the middle of the week unless they paid cash or produced a receipted bill showing full payment to the marketmen with whom they had last dealt. After the formation of the Harlem and Bronx Live Poultry Board of [fol. 173] Trade, the marketmen of the Bronx charged prices in excess of those charged before the formation of said association. One marketman was prevented from obtaining poultry in West Washington Market because he resigned from the Harlem and Bronx Live Poultry Board of Trade:"

(22) "39. At the time of the filing of the original petition, February 7, 1930; at the time of filing of the amended petition, April 16, 1930; and up to the time of the trial of this case, there has been a continuous and dangerous probability of resumption of all of the acts, purposes, means and methods described in the amended petition."

(23) "40. The presumption of continuance of the conspiracy and of the participation of the various defendants therein has not been rebutted."

(24) "41. Each of the allegations in the amended petition has been proved by the Government."

V. The Court erred in making the following Conclusions of Law:

(1) "(1) This Court has jurisdiction over the cause herein and over each of the defendants."

(2) "(2) Poultry shipped into New York City remains in interstate commerce until sold and delivered by receivers to marketmen."

(3) "(3) All of the defendants herein, except Jacob Damsky and Sam Silverman, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," (26 Stat. 209), commonly known as the Sherman Antitrust Act, entered into and engaged in a conspiracy to restrain and monopolize, attempted to monopolize, and did restrain and monopolize the interstate trade and commerce in live poultry in the Southern District of New York, in the Metropolitan Area, and among the several States from which poultry is shipped into New York City. In pursuance of said conspiracy, said defendants and others restrained and monopolized the intrastate trade and commerce in live and freshly slaughtered poultry, in the Metropolitan Area, by the means and methods described in the amended petition."

(4) "(4) The conspiracy commenced in June, 1927, and continued up to and beyond the time of filing the amended petition, April 16, 1930; and all of the defendants except Jacob Damsky and Sam Silverman continued to participate in said conspiracy during said period of time."

(5) "(5) A dangerous probability of future violations of said Act of Congress and of resumption of all of the acts, means, methods, and purposes set forth in the amended petition, by defendants now exists, and has existed continuously at all times since June, 1927."

(6) "(6) The petitioner is entitled to an effective injunction restraining not only the conspiracy and monopoly alleged and similar conspiracies and monopolies but also [fol. 174] restraining individually each of the overt acts, means, methods and purposes set forth in the amended petition and any other acts which have a tendency to recreate the conspiracy or monopoly alleged, or any similar conspiracy or monopoly."

VI. The Court erred in admitting in evidence in behalf of the petitioner-respondent, over objection and exception duly taken by counsel for defendants-appellants, the following papers and documents:

(1) Exhibit No. 5, consisting of Indictment No. C 61-824, in the criminal case entitled United States of America v. Greater New York Live Poultry Chamber of Commerce, et al.

(2) Exhibit No. 7, consisting of Record on Appeal to the Circuit Court of Appeals, in the criminal case entitled United States of America v. Greater New York Live Poultry Chamber of Commerce, et al., No. C-621-824.

(3) Exhibit No. 11, consisting of statement purporting to show amount of payments made by Bernstein & Son and New Jersey Coop Company to the Chamber of Commerce.

(4) Exhibit No. 18, consisting of purported photograph of the witness Aaron Steinberg's truck.

(5) Exhibit No. 19, consisting of purported photograph of the engine and motor of the witness Aaron Steinberg's truck.

(6) Exhibit No. 20, consisting of purported photograph of the engine and motor of the witness Aaron Steinberg's truck.

(7) Exhibit No. 21, consisting of sheets in small note book bearing hand written entries allegedly in handwriting

of the defendant Louis Weidberg, showing items of collection and disbursements.

(8) Exhibit No. 23, consisting of the judgment roll in the criminal case entitled United States of America v. Greater New York Live Poultry Chamber of Commerce, et al., C 61-824.

(9) Exhibit No. 24, consisting of a list of the members of the Chamber of Commerce, poultry markets, who made assignments of ten cents a coop to the Greater New York Live Poultry Chamber of Commerce, for the period commencing January 7, 1929, up to January 6, 1930.

(10) Exhibit No. 25, consisting of a list of the amounts of the payments made from week to week by the New Jersey Coop Company and Bernstein & Sons, Inc., covering the period from November 18, 1926, to and including January 9, 1930.

[fol. 175] (11) Exhibit No. 26, consisting of a list of the persons who made assignments of ten cents per coop owing from the New Jersey Coop Company and Bernstein & Sons to the Live Poultry Dealers Protective Association for the period commencing November 15, 1930, and ending November 16, 1931.

(12) Exhibit No. 27, consisting of list of persons who made assignments to the Live Poultry Dealers Protective Association for the period from November 16, 1928, until November 15, 1929.

(13) Exhibit No. 28, consisting of list purporting to contain amounts of the payments from week to week by members of the Live Poultry Dealers Protective Association of New York and vicinity to that association by virtue of the assignments of ten cents a coop owing from the New Jersey Coop Company and Bernstein & Sons, covering the period from December 3, 1928, to and including September 10, 1931.

(14) Exhibit No. 29, consisting of a list of the markets with their addresses, which made assignments of ten cents a coop owing from the New Jersey Coop Company and Bernstein & Sons to the Live Poultry Slaughter House Association for the period of one year commencing September 8, 1931, to September 7, 1932.

(15) Exhibit No. 30, consisting of statement purporting to represent the total amounts of the weekly payments of the ten cents per coop to the Live Poultry Slaughter House Association by Bernstein & Sons, Inc., and New Jersey Coop Company, covering the period from September 17, 1931, to and including November 19, 1931.

(16) Exhibit No. 32, consisting of list of markets classified according to the various districts of the city who made assignments of ten cents per coop owing from the New Jersey Coop Company and Bernstein & Sons to the Greater New York Live Poultry Chamber of Commerce for the period from November 16, 1926, to and including November 15, 1928.

(17) Exhibit No. 33, consisting of a list of the markets who made assignments of ten cents a coop owing from the New Jersey Coop Company and Bernstein & Sons to the Live Poultry Dealers Protective Association of New York and vicinity for the period commencing November 16, 1928, and ending November 15, 1929.

(18) Exhibit No. 46, consisting of petition and order dated January 26, 1926, for leave to commence action against Community Live Poultry Corporation, in a proceeding in the Supreme Court, Kings County, brought by Albert Ottinger, Attorney General of the State of New York, against Community Live Poultry Corporation.

(19) Exhibit No. 47, consisting of certified copy of Judgment Roll in an action brought in the Supreme Court, Kings County, by The People of the State of New York, as plaintiff, against Community Live Poultry Corporation, as defendant.

[fol. 176] (20) Exhibit No. 50, consisting of Final Judgment and Consent to the Entry thereof, in an action brought in the Supreme Court, Kings County, by The People of the State of New York, as plaintiff, against Square Deal Poultry Corporation, as defendant.

(21) Exhibit No. 51, consisting of a piece of paper having writing thereon in Yiddish, addressed to "Mr. Goodnick", signed by "Jacob Blum".

VII. The Court erred in refusing to admit in evidence in behalf of the defendants-appellants, to which exception was duly taken by counsel, the following papers and documents:

(1) Exhibit No. Z, for identification, consisting of petition and papers, all briefs that were filed and submitted in connection with the defendants' motion to dismiss the petition herein.

(2) Exhibit No. A-1, for identification, consisting of Notice of Motion to dismiss the original petition herein, made returnable on April 4, 1930.

(3) Exhibit No. B-1, for identification, consisting of order entered on motion to dismiss the original petition herein, dated April 6, 1930.

(4) Exhibit No. C-1, for identification, consisting of Petitioner's brief, dated April 4th, 1930, submitted to the Court in opposition to the motion to dismiss the original petition herein.

(5) Exhibit No. D-1, for identification, consisting of Defendants' brief, submitted to the Court in support of the motion to dismiss the original petition herein.

VIII. The Court erred in granting the decree herein and in enjoining the defendants, as follows:

"6. That defendants, in violation of said Act of Congress, conspired to restrain and monopolize, attempted to monopolize, and did monopolize, interstate trade and commerce in live poultry within the Southern District of New York and in the Metropolitan Area, by the following means among others: allocating and assigning retail dealers and butchers to the several marketmen; requiring retail dealers and butchers to purchase poultry exclusively from the respective marketmen to whom they were allocated, and preventing said retail dealers and butchers from purchasing or obtaining poultry from any other source either within the State of New York or in other States; requiring all market men doing business in the Metropolitan Area to abide by said system of allocation, and preventing said marketmen from selling to retail dealers and butchers other than those allocated to them; boycotting marketmen and retail dealers who did not abide by all of the terms of the conspiracy, and

[fol. 177] preventing them from purchasing poultry from the receivers in West Washington Market, at the railroad terminals in New York and New Jersey, in States other than New York and New Jersey, or from any source whatever; preventing receivers and marketmen from selling or delivering poultry to marketmen and retail dealers who had been boycotted as aforesaid; preventing marketmen, retail dealers and butchers who owed money for prior purchases, from purchasing, selling, loading, unloading, trucking, conveying, slaughtering, handling, or delivering poultry at any place either within or without the State of New York; causing strikes and preventing members of Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, and of the Official Orthodox Poultry Slaughterers of America, Inc., from loading, unloading, trucking, conveying, slaughtering, handling, delivering, or selling poultry for marketmen, retail dealers, or butchers who did not abide by all of the terms of the conspiracy; fixing and maintaining oppressive prices to be charged to retail dealers and butchers; dictating retail prices to be charged by retail dealers and butchers; collecting from marketmen large sums of money generally computed at approximately 1¢ per pound, on all poultry sold by them, and dispensing said money among themselves, to retail dealers, and to persons employed to carry out the objects of the conspiracy; and employing other violent, oppressive, and coercive methods in the enforcement of said conspiracy;

"7. That defendants, their officers, agents, servants, employes, and all persons acting under, through, by, or in behalf of them or any of them, or claiming so to act, be and hereby are, perpetually enjoined, restrained, and prohibited (a) from doing any of the acts set forth in paragraph 6 herein, and (b) from forming, joining, aiding, entering into, or participating in any combination or conspiracy having any of the purposes, objects, or effects, or employing any of the means or methods, described in paragraph 6 herein, or having any of the purposes, objects or effects, or employing any of the means or methods described in the amended petition;

"8. That each of the defendants, their officers, agents, servants, employes, and all persons acting under, through,

by, or in behalf of them or any of them, or claiming so to act, be, and hereby are, perpetually enjoined, restrained, and prohibited—

(a) from aiding, serving, or participating in any association, combination, or membership corporation of marketmen, receivers, retail dealers, and/or butchers, which has among its objects or effects: allocation of retail dealers, butchers, or others, among marketmen; fixing or enhancement of prices paid to marketmen, retail dealers, or butchers; boycotting of marketmen, receivers, retail dealers, or butchers; elimination of competition in the sale or distribution of live poultry; establishment of any system whereby marketmen agree to act in concert to prevent any retail dealer, butcher, or marketmen from purchasing or obtaining delivery of poultry from any source within or without the State of New York, whereby retail dealers and butchers are prevented from engaging in the wholesale business, or marketmen prevented from engaging in the [fol. 178] retail business; refusing to sell for cash to retail dealers, butchers, or marketmen, who have not paid their bills to persons or corporations other than the one concerned in the proposed purchase; agreeing or acting in concert with each other or others to fix prices to be paid to receivers;

(b) from attempting to create, or creating in the poultry industry of the Metropolitan Area or in the minds of any persons engaged therein, a feeling of fear and terror for the purpose of preventing said persons from buying, selling, or distributing live poultry in a free, open and competitive market;

(c) from detaining, destroying, or damaging vehicles, or other equipment used in conveying live poultry within, into, or through the State of New York, to or from marketmen, retail dealers, butchers, or receivers;

(d) from refusing, or instigating refusals, to load, unload, convey, deliver, slaughter, or handle poultry for any receiver, marketman, retail dealer, or butcher, wherever the rendition of such service under reasonable conditions shall be requested and the one requesting the service shall pay, or offer and be ready, able and willing to pay or

cause to be paid, therefor the fair and reasonable value thereof;

(e) from coercing receivers, marketmen, retail dealers, or butchers, or any persons, firms, or corporations engaged in the live poultry business in the Metropolitan Area to make payments or contributions to any cooperative plan, association, credit organization, or any mutual association of marketmen, receivers, retail dealers and/or butchers whatsoever;

(f) from employing any threats, boycotts, violence, or coercive devices for the purpose of enforcing the payment of any contributions or tribute from marketmen, receivers, retail dealers, or butchers, to any organization, association, corporation, or combination in the poultry industry of the Metropolitan Area; or for the purpose of inducing or compelling any marketman, receiver, retail dealer, or butcher to join, cooperate with, or abide by the rules, policies, or demands of any association, corporation, or other combination in the poultry industry of the Metropolitan Area;

(g) from causing or coercing any marketman to employ laborers in excess of his reasonable requirements, whether such coercion is effected under the guise of labor union regulations or otherwise;

(h) from following or spying upon marketmen, retail dealers, or butchers, or their representatives, employes, or truck drivers, for the purpose of ascertaining the source of their poultry supplies, or intimidating them;

(i) from paying any money or other consideration to [fol. 179] marketmen or retail dealers for the purpose of effecting a discontinuance or lessening of their wholesale business;

(j) from employing any device or doing any act having the purpose, effect, or tendency of recreating the conspiracy, diminishing or eliminating competition in the live poultry industry, or enhancing or fixing prices;

(k) from restraining the freedom of any marketman, receiver, retail dealer or butcher in any way in purchasing, loading, unloading, trucking, conveying, delivering, slaughtering, selling, or competing in the purchase and/or sale of poultry;

(l) from using any of the offices or positions in Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, or in the Official Orthodox Poultry Slaughterers of America, Inc., or in similar organizations, for the purpose of coercing marketmen to buy poultry, poultry feed, or other commodities necessary to the poultry business, from any particular sellers thereof."

IX. The Court erred in granting the motion of the petitioner-respondent for an interlocutory order striking out as sham certain denials in answers filed by the defendants herein who were convicted in the criminal prosecution heretofore had in this Court, which said interlocutory order was entered upon the direction of District Judge John M. Woolsey, and bears date October 30, 1931.

X. The Court erred in denying the defendants-appellants' motion to dismiss the amended petition herein, on the ground that the same fails to state facts sufficient to constitute a cause of action, to which denial exception was duly taken by counsel.

XI. The Court erred in denying the defendants-appellants' motion to dismiss the amended petition herein, on the ground that the evidence does not support the allegations contained therein, to which denial exception was duly taken by counsel.

[fol. 180] XII. The Court erred in denying the defendants-appellants' motion to strike out all the testimony and exhibits relating to the L. W. Credit Association, the Harlem & Bronx Board of Trade, the Live Poultry Dealers Protective Association and the Live Poultry Slaughter House Association, on the ground that they were shown to be separate enterprises whose activities related to intrastate commerce only, without being connected in any way with the conspiracy alleged in the amended petition herein, or with any overt act charged as having been done in pursuance or furtherance of said alleged conspiracy, to which denial exception was duly taken by counsel.

XIII. The Court erred in denying the defendants-appellants' motion to strike out all the testimony relating to alleged interferences with the sale and delivery of poultry by marketmen to retailers in New York, on the ground that

such alleged interferences affected and related to intrastate commerce exclusively, and were not shown to have been committed in pursuance or furtherance of any conspiracy to restrain interstate commerce, to which denial exception was duly taken by counsel.

XIV. The Court erred in denying the defendants-appellants' motion to strike out all the testimony and exhibits relating to conversations and transactions had between witnesses not parties to this action with other persons not parties to this action, on the ground that such conversations and transactions were not shown to have related to any conspiracy in restraint of interstate commerce, or that they were in pursuance or furtherance of the conspiracy alleged in the amended petition and that they were not shown to have been made or done by parties to this action, to which denial exception was duly taken by counsel.

[fol. 181] XV. The Court erred in denying the defendants-appellants' motion to strike out all the testimony and exhibits relating to alleged interferences, transactions, and all enterprises, in which any of the defendants may have been engaged after August, 1928, and/or since the beginning of 1929, on the ground that none of the testimony or exhibits tends to prove the existence or continuation of the conspiracy alleged in the amended petition since August, 1928, to which denial exception was duly taken by counsel.

Wherefore defendants-appellants pray that the said decree may be reversed, and for such other and further relief as to the Court may seem just and proper.

Dated New York, April 4, 1932.

Samuel H. Kaufman, Nathan D. Perlman, Attorneys for Defendants-Appellants.

[fols. 182-184] Bond on appeal for $250.00, approved and filed April 6, 1932, omitted in printing.

[fol. 185] IN UNITED STATES DISTRICT COURT

In Equity. No. 52-30

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed Feb. 15, 1933

It is hereby stipulated by and between counsel for the respective parties hereto, that the transcript of the Record on Appeal herein shall consist of the Petition and Order Allowing the Appeal and severing the action; the Citation; Appeal Bond; Assignments of Error; Amended Petition; Answer to Amended Petition; Motion to strike out portions of said Answer and the papers in support thereof; Order striking out portions of said Answer; Opinion of the Court on said Motion; Opinion of the Court delivered at the end of the trial; Findings of Fact and Conclusions of Law; Final Decree; Supplemental Opinion of the Court in support of Final Decree; the Statement of Evidence as settled and approved; and the following statement of facts: that the Original Petition filed in this cause on February 7, 1930, was, on motion duly made, dismissed for want of equity by an order duly entered on April 6th, 1930, with leave to file an amended petition within ten days from the entry of said order; that the Amended Petition herein was duly filed and served on April 16, 1930; that said Amended Petition contains all of the allegations of the Original Petition, plus the additional allegations embodied in para-[fol. 186] graphs numbered (27), (28), (29), (30) and (31) thereof and in all other respects is identical with the original petition, which statement of facts shall be in lieu of the said original petition, the motion papers and said order entered on April 6, 1930, dismissing said original petition; also that on June 2, 1930, a motion was duly made for an order dismissing the Amended Petition herein, or directing the petitioner to reframe the same and to make it more definite and certain upon the following grounds:

(1) That said amended petition consists for the most part, of allegations of redundant and impertinent matter relating to intra-state commerce;

(2) That said amended petition is vague, indefinite, prolix, inconsistent and uncertain, and contains many arguments and many conclusions, and does not allege ultimate

facts, by reason whereof, said amended petition violates Clause 3 of Equity Rule #25;

(3) That said amended petition purports to allege several distinct conspiracies and several causes of action, which are so intermingled and confusing as to prevent the proper joinder of issue by the above named defendants;

(4) The said amended petition does not state facts sufficient to constitute a cause of action under the provisions of the Act of Congress of July 2nd, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209) commonly known as the Sherman Anti-Trust Act;

(5) That said amended petition is duplicitous;

(6) That said amended petition, on its fact, shows want of equity,

and that an order was made and entered herein on July 1, 1930, denying said motion in all respects without written opinion, which said statement of facts so stipulated shall be in lieu of said motion papers and order.

[fol. 187] It is further stipulated and agreed that the term of the District Court for the Southern District of New York and the time for the return of the Citation, duly issued and served herein, and for docketing the case and filing the Record on Appeal in the office of the Clerk of the Supreme Court of the United States, was duly enlarged and extended by appropriate orders made and filed herein, to and including the 1st day of March, 1933.

It is further stipulated and agreed that the Clerk of the District Court for the Southern District of New York may certify the foregoing as the transcript of the record in the above entitled cause for use on the appeal herein to the Supreme Court of the United States.

Dated Feb. 10, 1933.

George Z. Medalie, United States Attorney, per W. L. R., Solicitor for Petitioner. Samuel H. Kaufman, Solicitor for Defendants Except Rosenman. Nathan D. Perlman, Solicitor for Defendant Rosenman.

So ordered 2/14/33.

Francis G. Caffey, U. S. D. J.

[fols. 188–190] Citation, in usual form, showing service on George Z. Medalie, filed April 7, 1932, omitted in printing.

[fol. 191] IN UNITED STATES DISTRICT COURT

E 52-30

[Title omitted]

ORDER EXTENDING TIME—Feb. 27, 1933

Upon consideration of the annexed petition, and good cause having been shown therefor, it is hereby

Ordered that the time within which the appellants herein may docket this case and file the record on appeal herein with the Clerk of the United States Supreme Court be and the same hereby is enlarged unto the 10th day of March, 1933.

Francis G. Caffey, U. S. D. J.

Consented to.

George Z. Medalie, U. S. Atty.

[fol. 192] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR ORDER EXTENDING TIME—Filed Feb. 28, 1933

To the Honorable Francis G. Caffey, District Judge:

The petition of the solicitors for the appellants in the above-entitled action respectfully shows unto your Honor:

1. That your Honor has granted to the defendants hereinafter named, leave to appeal to the United States Supreme Court from the decree entered herein on February 6th, 1932.

2. That pursuant to an order of your Honor the time of the appellants to file the record on appeal with the Clerk of the United States Supreme Court has been extended to and including the 28th day of February, 1933.

3. That the certified record on appeal herein has been forwarded to the Clerk of the Supreme Court of the United States for docketing, but it has become necessary to recall the same from the Clerk's office so that certain additions may be made thereto. It will then also be necessary to amend the copy of the record on file in this Court, and procure a recertification of the record as thus amended.

[fol. 193] 4. The attorney for the Government has this day consented over the telephone to the enlargement of the appellants' time to file the record on appeal herein until March 15th, 1933, and is today writing a letter to that effect to Samuel H. Kaufman, one of your petitioners.

5. Your petitioners therefore pray that this Honorable Court enlarge the time of the appellants for filing the record on appeal herein with the Clerk of the United States Supreme Court until March 15th, 1933, the said order of enlargement to be filed with the said Clerk of the United States Supreme Court.

Dated New York, February 25, 1933.

Samuel H. Kaufman, Solicitor for Defendants-Appellants Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, Carl Firestone, Charles Gershowitz, Morris Markman, Abe Newman, Official Orthodox Poultry Slaughterers of America, Inc., Harry Schomer, Charles Herbert, Harry Herbert, David Kaufman, Max Keslin, Samuel Silverman, Joseph Weiner, Aaron Weissler and Arthur Herbert. Office & Post Office address: 60 Wall Street, Borough of Manhattan, City of New York. Nathan D. Perlman, Solicitor for Defendant-Appellant Joseph Rosenman. Office & Post Office address: 475 Fifth Avenue, Borough of Manhattan, City of New York.

[fol. 194] [File endorsement omitted.]

Notice of settlement waived.

George Z. Medalie, U. S. Atty.

9—6

[fol. 195] IN UNITED STATES DISTRICT COURT

Equity. No. 52-30

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated February 15, 1933.

George Z. Medalie, per W. L. R., Solicitor for Petitioner. Samuel H. Kaufman, Solicitor for all Defendants Except Defendant Rosenman. Nathan D. Perlman, Solicitor for Defendant Rosenman.

[fols. 196 & 197] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 198] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,

vs.

GREATER NEW YORK LIVE POULTRY CHAMBER OF COMMERCE et al., Defendants

Statement of Evidence

Before Honorable Francis G. Caffey, District Judge

Be it remembered that the above-entitled cause came on for trial on the 16th day of November, 1931, before Hon. Francis G. Caffey, United States District Judge, holding an Equity Term of the District Court for the Southern District of New York, and the following proceedings were had:

APPEARANCES

George Z. Medalie, United States Attorney, Solicitor for Plaintiff. Walter L. Rice and Albert J. Law, Special Assistants to the Attorney General, Counsel.

Goldstein & Goldstein and Joseph F. Kroppy, Solicitors for Certain Defendants. Joseph F. Kroppy, Counsel.

Kaufman & Weitzner, Solicitors for Certain Defendants. Samuel H. Kaufman and Leo L. Fenbert, Counsel.

Sol H. Eisler, Solicitor and Counsel for Defendant Arthur Herbert.

Breed, Abbott & Morgan, Solicitors for Defendant Ole Salthe. Bernard A. Kozicke and Gerald J. Craugh, Counsel.

Blau, Perlman & Polakoff, Solicitors for Defendant Joseph Rosenman, Secretary of the Official Orthodox Poultry Slaughterers of America, Inc. Nathan D. Perlman and Moses Polakoff, Counsel.

[fol. 199] Sam Davis, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

I am a retailer of live poultry in Jersey City, New Jersey. I sold to Samuel Bernklau and Isidore Mosner, who are butchers in Coney Island, New York. They came to my market in Jersey City and purchased poultry. That was about two years ago; about October, 1927. Sometime they called for it and sometime I sent it over. If they called, they called with their own trucks. Sam Bernklau bought poultry from me around three or four months; mostly every day. Substantially all of his supply of poultry came from me. Some days he used to come and some days I used to deliver but most of the days he would come for it because he had his own machine. As to Harry Finkelstein, I delivered to him, with my own truck. I sold to Harry Finkelstein about the same time; it might be a week or two later. In Coney Island, I sold to four or five people, but I do not recall their names. I sold to butchers in Brooklyn, but they used to come down with the truck and used to pay cash for it, but I never inquired about the names. When I bought my stuff the first time, I bought on the railroad, and, of course, I didn't have any trouble and then after I bought,

later on, about three or four weeks later on, they wouldn't sell me stuff, they wouldn't load for me any stuff.

Q. When these people came to purchase poultry, what did they say to you?

A. You mean the butchers?

Q. Yes. Mr. Bernklau, Mr. Finkelstein, Mr. Mosner and the others.

Mr. Eisler: I object, your Honor, on the ground that it is incompetent and not binding on any defendants; what somebody said to him in the absence of any of those defendants. [fol. 200] Mr. Rice: If your Honor please, I would like to be heard.

The Court: Over-ruled.

Mr. Kaufman: Exception.

* * * * * * *

The Court: I am not going to consider all this testimony as to what people told him as establishing what they said as being true, not at all.

Mr. Perlman: I quite agree with your Honor.

The Court: But I have the right and I think it proper to take into account in determining what the state of mind was as to what conversations occurred and the Court of Appeals in the identical case has already ruled on that.

The Witness: When Sam Bernklau came to purchase poultry from me in October 1927 and thereafter, he asked me if I am willing to sell him poultry at such and such a price and if I do it, why, he will bring me some more customers. So I agreed with him on the price and he kept coming to my place and he fetched people along with him and the next time again, the other people came themselves until they all came around. The entire group was in the sale of this stuff when I sold at such a price, because they say they have got to pay $.10, $.12 or $.15 in the wholesale markets of Coney Island on stuff and I sold them $.05 a pound above the wholesale market quotations; they gave no other reason. I had been selling to Mr. Bernklau, Finkelstein, Mosner, and those other butchers and retail dealers in Coney Island and Brooklyn. I had difficulty in purchasing poultry myself. They wouldn't sell me any poultry because I am selling to the people—They wouldn't load me. I refer to the commission men in West Washing-

ton Market. There were no commission men in New Jersey. All the poultry that comes into New Jersey belongs to New York commission men and they handle the New Jersey. I can't recollect the day when it was or the week. [fol. 201] I went down to West Washington Market to load some stuff. That was Wednesday, when it was I don't know. I had my stuff stand on the sidewalk and I wanted to load it and go home. Over in Jersey they would not load me any stuff. They would not load me in Jersey any stuff so I had to send my stuff down to West Washington Market and from down there I went to load my wagon with stuff and they wouldn't let me load in the wagon. They said "Davis, you can't load." I said "What is the reason I can't load?" They say "You got to get a book from Jersey." Well, I asked a fellow by the name of "Tootsie"; I asked him and he said to me "Get the Hell out of here where you belong in Jersey. Get a book and come back here and get your stuff." So, of course, I couldn't get the stuff; I went back to Jersey and back in the union there in the union office, and they wanted $200 to give me a book and I told them I am not going to give you $200. They said "Well, we will make it for $100. We will give you a book for $100." Well, I was in business, I can't close my business up, so I say "I haven't got any hundred dollars." I said "I will give you $50; I will have to get it in the office in New York from the Castle Poultry Company and I will give it to the man who wouldn't let me load." So he said "That will be all right. I will call him up and let you load, give me $50 and the other $50 you will pay up at $10 a week." So I went up there; they charged $2.50 for the book; I don't know what it is, and I got the book. So I gave him $52.50 and he said "All right, you can load." So they loaded me and I went home. That was after they would not load me and after I gave the business up. They wouldn't load me stuff in Jersey for the wholesaler and then I had to give my wholesale up. They wouldn't sell me any stuff in Jersey, they wouldn't load me on the Erie [fol. 202] and Delaware. So I told him all right "I know where the chicken grows. You needn't tell me where I need to get my stuff". So I went and bought in Newark for a few weeks stuff and then after they called me up by the telephone they will stop me, they will take my permit away, they will go to the Health Department, so I asked

him this way. He said it cost me a cent extra to pay. So since that time I gave the wholesale business up. They wouldn't let me do it.

About three or four months after I commenced selling to these Coney Island butchers, I had trouble in West Washington Market, because then I have to have a book. This man I referred to as "Tootsie"; I really don't know; there are two brothers and anyway, they look all three alike. I think this is the man here.

(The witness identifies Charles Herbert.)

I wanted to load up four crates of chickens. Charles Herbert wouldn't load me, so the commission man said "Go over to 'Tootsie' and ask him, tell him to load you up," and I asked him to load me up and he said "Get the Hell out of here. Get back where you belong to Jersey." Charles Herbert said that. So, of course, I couldn't get them loaded up and I went away with my wagon. Charlie Herbert didn't say anything to me about selling to Coney Island butchers. The one who told me about selling wholesale was from Hoboken, New Jersey, John J. Conlin. I think he is a delegate of a labor union which functions in New Jersey. He told me through the telephone that if I won't stop selling Coney Island stuff, Brooklyn stuff, he is going to take my permit away; he is going to make me some trouble.

[fol. 203] Mr. Perlman: Is this offered as against defendants here? I object as incompetent, irrelevant and immaterial.

The Court: Objection over-ruled.

Mr. Perlman: I respectfully except.

The Witness: Well, that is what he told me; if I sell Coney Island or Brooklyn butchers he will go to the Health Department and make trouble for me and take my permit away and put me out of business. You have got to have a permit you know for a live poultry market. He didn't say anything else. At about this time I attempted to buy poultry from all of them at the Delaware, Erie and Pennsylvania yards in New Jersey. When I come to the market, of course they all knew me. I am an old timer. When I come in the railroad the man who takes the weights said: "Sam Davis, you can't get your stuff here, you can't get

any stuff on the Erie. Go home." I said "All right, don't make no noise. I will get some stuff. If you don't sell me, I will get some stuff." And then I went to Newark to get some stuff. The commission men would sell to me but the union men wouldn't load it for me. After I was refused poultry at the Erie, Pennsylvania and Delaware terminals, I went down to West Washington Market and I saw a party by the name of Harry Rosenstein and he sold me a lot of stuff, and we were there at midnight, that I got it, and after this I couldn't get any more there because it didn't pay me; so since that time I didn't get the stuff any more. In Newark I bought it. None of them at West Washington Market refused to sell. Rosenstein had some special men to load the truck over there that midnight. Prior to 1927 I did not sell poultry to butchers in Coney Island and Brooklyn. The last time I sold them was late in December 1927, 1928 two years ago.

[fol. 204] John J. Conlin told me I should stop selling stuff in Brooklyn and in Coney Island and if I wouldn't stop selling stuff in Coney Island and Brooklyn, he will make me some trouble; he will get my permit away, he will go to the Health Department and he will make me lots of trouble, etc. He said "If you don't stop selling these Coney Island and Brooklyn people some poultry, I will put you out of business. He told me to keep away from Coney Island and Brooklyn—selling stuff. I did not have any further conversations with Charles Herbert.

I attended a meeting at which those attending it spoke about collecting one cent a pound. That was in Jersey. They wanted to make you charge a cent a pound more for the stuff to make an association. Conlin was there and four or five delegates. He sent me a little card I should come to the meeting such and such a day. We went there; we had a meeting of about 12 to 15 poultry dealers and they said they are going to charge us a cent a pound for our stuff and make an association. Some of them wouldn't listen to them and some of them went down to the market, they couldn't get no stuff. Well, I couldn't get any stuff. After I got stuff they made me pay them a cent a pound. I got a thousand pounds of stuff I bought, I gave $10. The following week I had 880 pounds and I gave $8.80. I did not pay Conlin. He sent one of the men down to my place of business. There was a fellow, I think a big fellow; he

used to come and collect the money in the office. After that when I paid that and then that was after this they gave us a ticket. When we gave them the cent they gave us a ticket so we can go down to the market and get stuff loaded in our market. I went to Washington Market once and they [fol. 205] wouldn't load the chickens. I said "What is the matter? I got a ticket here." And they said this week I don't get no stuff. They said "We don't want tickets no more. You got to bring a union book." This meeting at which they discussed the one cent per pound collection took place about two weeks after I started selling them, about September 1, 1927. The 15 marketmen that were present at this meeting were Italian men. All in Hoboken and Jersey City, New Jersey. I don't know them. I only know a man named Morland who was present at this meeting. He is from Jersey City, but the balance was all from Hoboken, all Italian people. Most of the marketmen present were from Hoboken, and some of them were from Jersey City. I see them now and then pretty often, but I don't come in business with them because they are downtown and I am uptown. All these other men who were there I at some time would see in West Washington Market, and sometimes in the railroad terminals in Jersey City, and in Hoboken. I don't know who was chairman of the meeting. I am connected with the chauffeurs' and loaders' union of Jersey City, of which John J. Conlin is the delegate.

The chairman of the meeting said they should make a combination and each one of them should pay a cent a pound like they used to pay in New York and to make a whole association about it and we will be all in it and, of course, we didn't agree with that.

Then the Chairman said they wouldn't sell any stuff unless we pay a cent a pound to that association on every pound of poultry that the marketman buys from the railroad. Well, we didn't want to pay, and, of course, we couldn't get any stuff, so we went that week without stuff.

Whatever the marketmen buys from the railroad, whether a thousand or five thousand or ten thousand pounds, he has got to get a penny on every pound. There was nothing [fol. 206] said at this meeting about dividing up customers. They did say they will keep the price. If some will sell a little less than the others, they wouldn't get no stuff.

They all got to sell on the same price, the same prices as they say, thirty one cents or thirty-five cents a pound;

everybody got to sell at thirty five cents a pound, and if someone would sell at a little less than that, they wouldn't get any stuff. They said a cent a pound, and they fixed it up everybody should keep the same price and everybody should get the stuff and they will look out for them and if everybody don't sell at the same price, they won't load no stuff for them, and of course, we wouldn't stand for it. That was Tuesday night. On Wednesday we went for stuff and they wouldn't load me and I went back Wednesday and I told them I will get my stuff and I will give you a cent a pound and give me my stuff. So after they loaded me, there was a thousand pounds I had and I gave them $10 after I refused to pay the one cent a pound. I tried to buy poultry in Hoboken on the Delaware railroad from the Castle Poultry Company. I could get the stuff but the union loaders wouldn't load me. They wouldn't say anything. They said "We can't load for you", that is all. None of the Union men would load for me. I went back to the office and told them "I will give you a cent on a pound; they should let me have the poultry; so they loaded it. They wouldn't let me get loaded in New York.

Charles Herbert told me to go down to the union office in Jersey City. That was when I attempted to purchase at Washington Market. There was a man sitting by the desk, a tall fellow, and I told him about it. I told him I went down for stuff and they wouldn't let me load, I said: "What is the reason; I didn't owe you anything"; they said, "You got to have a book, and they won't load you [fol. 207] with a ticket, you got to take a book and the book will cost you $200". I says "Why do I need a union book, I am a dealer. I am not a working man, I am a marketman, and I don't need to be connected with the union men." Before that time, no one asked me to join the union. Someone in Conlin's office told me I needed a union book. I told him I would not pay $200; I couldn't pay $200. He said: "We will make you $100". I don't know what was the usual fee for joining the union.

A man came around to my market and collected $10 one week for 1,000 pounds that I sold and $8.80 the next week for 880 pounds that I sold. Two fellows with a machine. I don't know them. I know them in the market but I don't know their names. I told them I haven't got $100; I told them I would give them $50 and give them $10 a week to

pay off the balance. They telephoned they sould load me when I got the $50, so I went upstairs to the office and gave him $52.50; that was supposed to be dues for the book, so then he said: "All right, boys, load him; he is all right. $102.50 I paid to the same people. I paid $28.80 before I got the book. I paid $102.50 altogether. I had to pay him when I got the book. When I went to New York I had to have the book. When I didn't show the book they wouldn't give me no stuff. Charles Herbert once told me to get the hell out of West Washington Market. They wouldn't load me unless I had the book. When I am in two days they came in and collected $10. After I paid this $10 twice, they did not collect any more. I paid $28.80 before I got the book; $52.50 the day I got the book, and then I paid twice $10 a week and that is all I ever paid on account of this book. I paid that $28.80 as one cent per pound on the poultry I sold.

[fol. 208] Mr. Rice: I offer in evidence Exhibit 8 for identification.

The Court: Any objection?

Mr. Kroppy: I object to it as incompetent, irrelevant and immaterial. It does not tend to prove any conspiracy, as charged in the petition and does not connect any of the defendants with any of the things to which the witness has testified. At this time I would like to make a formal objection. I have waited for some testimony to connect the defendants whom I represent to any of the acts and I have heard none and I move at this time to strike out all his testimony. I also object on the ground that none of his testimony tends to prove the conspiracy to restrain interstate commerce as alleged in the petition or any conspiracy in restraint of interstate commerce in live poultry.

The Court: Motion denied.

Mr. Kroppy: Exception.

Mr. Kaufman: I join in the same objection.

The Court: Same ruling.

Mr. Kaufman: Exception.

[fol. 209] Cross-examination.

By Mr. Kroppy:

Witness: I have not had any trouble or any difficulty in either buying or selling poultry since December, 1927, or

December, 1928. I am still in the business of buying and selling poultry, and since December, 1928, I can go to Washington Market, and to the terminals in Jersey City, and buy all I want. Nobody interferes with me, and I don't have to pay any money in order to buy it.

[fol. 210] SAMUEL GOLDSTEIN, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I have been a commission merchant since 1928. In 1927 and 1928 and 1929 I had a retail market and a commission business. Before 1928 I was, for a couple of years, in the commission business but I still had slaughterhouses. I was a marketman, who sells poultry to butchers. I was a partner in Goldstein & Siegel in 1927.

I attended a meeting of Bronx marketmen in the summer of 1927, at the Bronx Casino. I should say maybe 15 or 20 or 25 were present. Only the market people from the Bronx were there. The next meeting was before Benjamin Simon became Supervisor of the Chamber of Commerce. I attended very little those meetings after that. I believe I did attend some meetings of Bronx marketmen after Benjamin Simon became supervisor. Those who were present at this meeting at the Bronx Casino were Mr. Bell of the 156th Street Live Poultry Company, Abe Bloom, Julius Dolobovsky, Isidore Frank, Meyer Friedlander, Gross of the Zion Market, Sam Friedman, Louis Goldburg, Murray Siegel, my partner, K. Gross, Jaffee from the Tremont Live Poultry Company, Sam Manne and Joe Manne, Hyman Raby, Rosenbaum of the Webster Live Poultry Company, Slabagd of the Sliver & Castine Poultry Company, Louis Spatz, Max Sokoloff, of Sokoloff & Siegel, Aaron Steinberg, I. Winkler, of Winkler & Diamond. The man that presided at that meeting was Max Sokoloff; he is dead. He proposed that we who were there present have our own terminals for receiving the poultry from out west. The only thing that I remember that was said is to build the business in good

shape and we got to have money for that, that is as far as I can remember.

[fol. 211] I was a witness for the Government, but not a defendant, in the criminal prosecution.

Q. Was anything said about not interfering with each other's customers?

A. Well, exactly, I don't remember, but I think it was said where we should pay a cent a pound in on our poultry.

Q. Who said that?

A. The chairman.

Q. Who was the chairman?

A. Max Sokoloff.

Mr. Kroppy: If your Honor please, may I make an objection at this time to this line of testimony on the ground that the interfering with the customers of these men who were present, who were marketmen, relates to their own business, selling by marketmen to retail dealers. It is intrastate business and anything that was discussed at that meeting, concerning that trade or concerning interference with that trade, is absolutely immaterial and irrelevant to this case.

The Court: Overruled.

Mr. Kroppy: Exception.

The Witness: The chairman brought up at the meeting, that if we want to have a business, we need money. How can we get money? We should all agree to pay a cent a pound for each pound of poultry we bought, not what we sold. All of the members present discussed it. Some of them said we shouldn't and some of them said we should until we all came to an agreement that we should pay a cent a pound. Every person present at that meeting said he would pay a cent a pound. It was said at that meeting that the money should be used to build our own terminals. The old man Sokoloff brought that up. Now, some of that money should be distributed to some small retailers that they did not do any wholesale business for the purposes—because they could not make a living from their retail business alone. What they did—if we should pay to him a cent a pound to the pool for reserve, then we had to charge a cent a pound more for our merchandise when we sold it and if we wouldn't pay that something to the retailers where

they should make a living they would go out and cut prices [fol. 212] and sell cheaper and we were trying to prevent that which we did. We were trying to prevent the retailer from selling cheaper.

Mr. Kroppy: May I make the same objection and have the same exception to this witness's testimony?

The Court: Certainly.

Mr. Perlman: It is difficult for every counsel to be jumping up. I thought I might say this that I have a general objection to every bit of testimony of everyone not in the presence of my client, on the theory it does not bind my client at all. Your Honor overruled that objection to the testimony and I have my exception.

The Court: Sometimes I would and sometimes I would not.

Mr. Perlman: Then I have my objection and exception to this witness's testimony up to the present time as far as my client is concerned.

The Court: You object to it?

Mr. Perlman: I certainly do.

The Court: Overruled.

Mr. Perlman: Exception.

The Witness: One cent a pound was collected from the market men in the Bronx, by Louis Spatz; for a couple of weeks I collected myself. The collections started a few days after the meeting that I spoke of in the summer of 1927. Whenever anybody didn't pay then Jacob Mast used to go out and get it for me. The regular collector for that one cent per pound was Louis Spatz. We had a meeting, and a couple more came to me and claimed where Louis Spatz is collecting too much money, and he don't turn in all the money, whatever he collected. Then we agreed at the meeting I should go out myself and collect a couple of weeks and see how much money comes in, and I did. I believe he must have collected from about 18 or [fol. 213] 20 people. There were about 30 market men in the Bronx, maybe more. The total amount of the collections was about $2,000, $2,500 a week. I think it was said at that time that the retailers should put up $300, and the wholesalers should put up $500 security. I don't remember who held that money; I believe that money was held by Hyman Raby, Max Sokoloff and Isidore Frank. The whole-

salers put up $500 apiece as security for the payment of the one cent a pound. I was an expection; I didn't give it in. I told Max Sokoloff, the chairman, I have no money. I will pay out anyhow. I didn't pay exactly one cent a pound, because I stole on them more than I paid; I couldn't afford to pay a cent a pound. When I took in 50,000 pounds poultry, I show them duplicate tickets for 20,000. I, as a commission man, sent in my poultry from the car in my place, and instead of showing him the right ticket, I showed a ticket with a few thousand pounds less, to give a cent a pound less. I paid one cent a pound on the amount that I reported. Some weeks about $200; some weeks, $150; some weeks, $175. At the meeting the way I understood that cent was collected to pay out part of the money to the small retail markets selling to women only and not to the butcher trade, and part of the money was supposed to go to Benny Simon.

We paid the retailers to keep out of the wholesale trade, because we were thinking if we will start to take a cent a pound more from the customers they will start to interfere in the business. We give them a few dollars a week to make a living, and not interfere. This arrangement was made by Max Sokoloff, the chairman, with every retailer. What he told them, I don't know. He reported at the meeting where to go and so has got to get $25 a week, or so and so has to get $30 a week. Of this money, $900 or $1,000 [fol. 214] was to go to Benjamin Simon, as the contribution of the Bronx marketmen. It was stated in the meeting that every Borough has got to pay that office. I mean Harlem, the East Side, Brownsville Borough Park, Williamsburg and Coney Island. Louis Spatz reported that he did turn in the money to Benjamin Simon. Bronx Borough was the biggest payer. Some time it was not paid; some time the one cent a pound was not paid by the members either; they skipped, and we didn't get any money. I drove around to the various markets with Louis Spatz on several occasions. I saw Aaron Steinberg give Spatz $100 once in Steinberg's office, for the collection. Steinberg did not object to paying the $100, and I never heard him object to paying the one cent a pound. Some weeks I think Louis Spatz used to report he collected about $100, $125, $150 from the Monroe Poultry Market.

Jacob Mast is a bookkeeper. At that time he used to check up on the amount of poultry handled by each marketman by examining their purchase tickets. He reported the amount which each marketman handled to Louis Spatz. If Spatz found that I handled 20,000 pounds he was supposed to collect $200 from me—that is one cent a pound. His duty was to figure up the tickets in each market, get the weights of the poultry, and give them over to Louis Spatz, who used to go out and collect the money. The tickets for the poultry were due to come in from West Washington Market to the slaughterhouses and he just took the weights off. He did not report to anybody else than Louis Spatz. Max Sokoloff arranged for Mast to do that in the summer of 1927 at a meeting.

Bloom Brothers paid $200 or $250 or maybe $300 some [fol. 215] weeks to Spatz for the one cent per pound collections. Morris Bloom paid me twice, around $200. I turned it over to Louis Spatz. He did not give me a receipt. R. S. G. Company paid a small amount. Max Sokoloff paid as much as he wanted because he was the Chairman. I heard at the meetings that he paid $100, $125 and $150 a week. Harry Schoenzeit paid $150, $100, $125 a week. Max Rosen was supposed to pay $300, according to what Spatz said at the meetings. Webster Live Poultry Co. paid $125 or $150. I collected from them once—$140 or $150, based on one cent a pound. They sold 14,000 or 15,000 pounds. Jacob Turkowitz of F. G. T. Poultry Co. was supposed to pay $250 or $225 according to how much poultry he took in. Spatz reported at the meetings that Slabogd and Kastein paid about $25, and that I. Winkler of Winkler & Diamond paid about $100 a week, and that Isadore Frank paid $100 to $200 a week. Spatz reported that Hornstein & Spatz paid sometimes $200, $225, and $300, and that Manne Brothers paid $50, $60 to $75 sometimes. My firm of Goldstein & Gross paid $100, some weeks $150. I don't believe I paid $300 a week. I tried not to.

Q. Were the total collections in the Bronx ever more than $2,500 per week?

A. Something around like that.

Q. Were they ever as much as $3,000 per week?

Mr. Kaufman: I object to that on the ground it is immaterial.

The Court: Overruled.
Mr. Kaufman: Exception.

The Witness: I couldn't say it exactly. I don't believe they ever exceeded to $3,000.
[fol. 216] That is what I think. I don't know; maybe some weeks when there was a big collection, I couldn't say. I told you before what was done with that money. That money was supposed to go, some of it, to the retailer, and about $900 or a $1,000 a week, I don't remember, Louis Spatz used to say he had to give Benjamin Simon. I don't know that Kalman Shapiro was paid any money by the Bronx market men. I never heard that Spatz paid him any money.

Mr. Rice: Kalman Shapiro is not a defendant in this proceeding.

The Witness: Kalman Shapiro is a shochet. He did not have any office in the shochtim union, that I know of. I never had anything to do with the Shochtim Union.

Q. Did you testify at the criminal proceeding that Louis Spatz told you that he paid $75 a week to Kalmon Shapiro?
A. Maybe I did; I don't remember it now.

Mr. Rice: May I ask for the privilege of reading his testimony on this point, to refresh his recollection, if possible.
Mr. Perlman: I object to that, on the ground that Kalman Shapiro was not a party to this case or a defendant here. Further, on the ground that the witness has definitely stated that there was no such conversation, making that as a definite statement, his recollection need not now be refreshed and cannot be refreshed.
The Court: Overruled. Proceed.
Mr. Perlman: Further on the ground that the witness is being impeached by the Government.
The Court: Proceed. He is an adverse witness, and being examined as such.
Mr. Perlman: Is he an adverse witness?
The Court: Yes, proceed.
Mr. Perlman: I respectfully except.

The Witness: I remember after hearing you read my testimony in the criminal trial that Louis Spatz told us he has got to give to Shapiro $75 a week. I asked him why that

[fol. 217] $75 — coming to him, and he said, every borough is giving him $75 a week, Shapiro should do whatever he is asked to do.

Q. Did Spatz say that the purpose of this was to make the Shochtim Union do whatever the market men wanted him to do?

A. So what?

Q. Did he say that the Shochtim Union was to do what the market men demanded?

Mr. Kroppy: I object to that. He has already testified that the money was paid to Shapiro to have him do what the market men wanted him to do. He is trying to contradict him again about that statement.

The Court: Overruled.

Mr. Kroppy: Exception.

The Witness: I don't remember that unless you can read it to me.

Q. Well, do you remember Sam Gold paid on behalf of the Brooklyn market men?

A. I don't remember.

Q. Do you remember whether Spatz said anything to that effect?

Mr. Kaufman: I object to what Spatz said.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: He said every Borough paid it. If he paid him or not. I know he took money for it. If he said every Borough paid there must be one that paid too. I never saw Sahn pay any. All I heard is from Louis Spatz, what he said. I remember when Louis Spatz did tell me that Sam Gold pays $75 a week for Borough Park, and Sam Sahn pays for Brooklyn $75 a week. He said some one else paid for four boroughs, Bronx, Harlem, Brooklyn and East New York. Spatz said that Weinstock, a retailer, was paid sometimes $100; sometimes nothing; sometimes $150. That is as far as I can remember it. I talked with Kalman [fol. 218] Shapiro about these payments. When Louis Spatz said he is paying $75 a week, I didn't believe it. Then, I made up my business to see Kalman Shapiro, and

ask him. I asked him if he is getting $75 a week from Spatz, and Kalman Shapiro said he didn't get a nickel of it. I don't know as a matter of fact whether or not he did receive the $75 or whether or not the other boroughs paid him $75. I base my entire knowledge upon what Spatz told me. Spatz told me that all of the four boroughs, including the Bronx, were each paying $75 a week to Kalman Shapiro. He also made reports at the meetings as to what retail market men he paid the money to.

Q. 443. Now, let us take up each one of these retailers to whom Spatz said he paid money.

Mr. Kroppy: I object to that as immaterial and irrelevant to the issues in this case.

The Court: Overruled.

Mr. Kroppy: Exception.

The Witness: I think Grobolsky, a retailer, received payments according to these reports. I can't tell you how much. All of the market men who received money from Spatz were located in the Bronx. And all of the markets who paid money to Spatz and the other collectors were located in the Bronx. A poultry dealer located on the bridge at 129th Street and Third Avenue received money $25 a week. Charles Russof and his brother-in-law, retailers, received also between $25 and $50. Celia Frank of the Columbia Poultry Company received about $40 or $50 a week. The Mount Vernon Poultry Company received about $100 or $150 a week. Friedlander sometimes received maybe $50 or $60.

I remember that Louis Spatz came and explained at the meeting that he made the deal with Manne Brothers, whole-
[fol. 219] sale marketmen, and with Rosenthal and Nathanson, and Plitkin & Sorkin, to pay so much money a week and take the customers and put them in other wholesale markets where they didn't do enough business. Manne Bros. had been paying money. When they stopped selling wholesale, they received money. For instance, if I was a market man and I did no business and they came to collect I showed my books and said, "How can I pay a cent a pound? My gross was $800, and my expense was $900. If I was to give you money I will lose." They came to Manne Brothers, and Manne Brothers said, "How can I pay you money? I do a little business and I cannot afford to pay Louis Spatz." So Louis Spatz says, "Sell out your whole-

sale business." He said "All right, how much will you give me a week?" Louis Spatz said "All right, I will give you $100 or $200 a week, and give me your wholesale trade." Manne said, "All right, I will sell it to you." He took Manne Brothers' trade, and put it in three or four wholesale markets. He would give to me three or four customers and three or four customers in the other place, and in the third place he would do the same. In the meantime he would at the end of the week make a little profit and pay that cent a pound, so that is the way it was. These small people who were paid money, they could do a wholesale as well as a retail business.

Joe Mast sometimes went with Spatz to collect. Sometimes Mast went back a second time if the marketman was not in, and collected.

This association in the Bronx lasted around a year. This collecting was all done before the criminal trial. Some weeks we didn't pay at all. For the most part collections and payments were made during the most of this period [fol. 220] of a year or so. Spatz received $100 a week compensation for his services that we knew of.

The Bronx marketmen bought Spatz a present. About this present, the market people came around and told me he is doing such wonderful work, they are all making a living, and willing to buy him a present, and they came down to me and asked me for $100, and I didn't give them five cents. They took up about $1,500 or $1,600, and they bought a Cadillac, and the car amounted to about $2,500, and he paid the balance himself, and he took it out.

Sokoloff and I went down to Meyer Friedlander to ask him for some money, a cent a pound, and when we come down to him he asked us for money. He says he cannot pay it. He says he wants us to pay a cent a pound for his customers, but finally we arranged with him he should keep the customers and should not ask us for money and we did not give him any money. He said he would not take anybody else's customers because he didn't have the money to conduct the big business. He always done a small business. If he did take somebody else's customers, he would not be prevented from getting poultry. We never done that.

Salthe did not break up our association, at one time. He didn't have to break it up. We broke it up ourselves. We made the association when Salthe came in.

Q. What did he say?
A. If I am not mistaken——

Mr. Kaufman: I think this is purely hearsay.
Mr. Rice: Sokoloff is a defendant.
The Court: It does not make any difference whether he is a defendant or not. It is a question of whether he is a co-conspirator. You put in declarations of a person not a party who is a co-conspirator, and the prosecuting officer is always indicting under the conspiracy section. They do not have to do that if you familiarize yourself with the rules of evidence. You will know that the declaration of a co-[fol. 221] conspirator in furtherance of a conspiracy is competent evidence, and if it should turn out here that the evidence is insufficient to establish a conspiracy participated in by the declarant, or the declaration was not made in the course of or in furtherance of the conspiracy I might have to discard it, but I will have to take it up. You cannot do it at once. I am going to hear you gentlemen sum up your case before the end. Proceed."

The Witness: I went to Salthe once and talked to him about the business after he opened up his branch business. We had our customers and we had an organization that protects our money. When a butcher came from another market and did not bring receipted bills, the other marketmen did not sell him. Now all these particular customers that owed everybody money, they went to Salthe. He never asked them anything, and he sold them poultry. I talked to Salthe about it, and he made me a proposition. He says, [fol. 222] if you want me to protect your money by not selling to any customers who cannot bring a receipted bill paid in full, then I will be left without business, because I heard every customer coming here owes money all over; but, he said, I will make you a proposition. You take from us five or six cars, or seven cars a week, and pay us a cent a pound more than the market, then we will protect your bills. I said to him, six or seven cars a week at one cent a pound amounts to about $1400 or $1500 profit a week. I says, if the market people are willing they can do it. I am in the commission business myself, and I look to sell to the Bronx marketmen too, and if you will take away all of the trade how will I go and sell my poultry? I am in the same line of business. I said I am not going to agree to it. Finally, after that I says to him, we will take from

you even more than that. I says, it doesn't make any difference. Any people that don't have to come to West Washington market to buy poultry, they can come just as good to your terminal and buy poultry from you at 149th Street, where it is only ten minutes from their place, but charge the same price West Washington charges, and you will get the commission. I said that because he was getting four or five per cent. from the shipper for handling the goods. He refused to do that. He wanted a cent a pound extra. I didn't do no deal with him, and I then come down to our people and reported. Now, what became of it after I don't remember.

After Max Sokoloff made an arrangement with Salthe I was out of the business. I don't believe they ever paid him a cent a pound.

I went to Benjamin Simon, and I asked him how much he [fol. 223] is getting a week. I told him "you are getting from Louis Spatz $900 or $1000 a week. He laughed at me and said "I never got that money from him."

For a few weeks we paid ½ cent a pound. Then we raised the payments to 1 cent a pound.

Cross-examination.

By Mr. Kaufman:

The Witness: I testified before that the purpose of this meeting in the summer of 1927 was to discuss some plan for owning a terminal; I think Benjamin Simon told us, to save some money. He said that part of the money was to be used to fight the union in case there was a strike declared by the union. That was discussed at that meeting, in the summer of 1927, at which Mr. Sokoloff was the chairman. It was at or about that time that these collections were commenced. The criminal trial started on the 4th day of October, 1929, and we ceased making collections in June or July of 1928. From that time on, there were no collections of any kind. And no meetings of any kind. At this first meeting, in July or August of 1927, there was talk about using part of this collection for the credit organization of the market men in the Bronx. At that time the market men were selling to butchers all through the Bronx. These butchers were supposed to settle their bills with the market men about once a week. Very frequently these

butchers would fail to settle with their market men and go to another market man. And that created great loss in the business for the market men, as high as $1,500 to $2,000 to a customer. I will tell you about the butchers: One butcher came into me this week and killed by me $500 poultry a week. The following week he is supposed to come and bring me a check for this $500. If he don't bring me [fol. 224] the check I wouldn't give him any more poultry; but the following week he did not come into me, and did not bring the check. He went away to second market and killed $500 poultry over there. His second market man didn't know he owes me the money, and the third week the butcher went to a third market and took $500 poultry, and finally, when he owed $1,500 the marketmen had no money and no customers. We came together and talked together between us. It just happened at that time that one man failed on me for $2,800, and failed on other markets more, because after he went away from me, he went to the other markets, and took poultry from them. He went to that man Steinberg and did the same thing. They have a judgment against him. We started to work together and we agreed to make a credit organization to try to protect our bills. Now we went and took a lawyer, and he made a credit organization for us. We started to work, and we had to use some of that money that we paid for the lawyer's expenses. We had to have people they should look out for that to be sure if a butcher owes me money, the other market men should not sell him before he pays me, and we had to have somebody to keep an eye on the business, and we had to pay for the expenses. It was those things that were discussed at this first meeting that I talked about in July or August of 1927. The only people that were in our organization were about 20 wholesalers from the Bronx. There were some other small ones in the Bronx that didn't belong to our organization.

Mr. Kroppy: I want to make a motion, if your Honor please, to strike out all the testimony of this witness, on the ground that the activities to which he has testified do not relate to or affect interstate commerce in any way; and also on the ground that they do not tend to prove a conspiracy, such as is alleged in the amended petition, or any conspiracy in restraint of interstate commerce.

[fol. 225] In that connection I ask your Honor to take cognizance of the decision of the Circuit Court of Appeals, to the effect that the interstate commerce ended with the sale to the market men, and the testimony given by this witness relates to the transactions simply between market men and the retailers, the butchers.

The Court: I will deny your motion.

Mr. Kroppy: I take an exception. I would like to ask this witness a few questions.

Cross-examination.

By Mr. Kroppy:

The Witness: In regard to these collections and payments of money to which I have testified, some of that money was to be used for the purpose of buying out other market men who were unable to do business profitably, or to pay retailers, in order that they should not engage in the wholesale business, and part of the money was to be paid to Benjamin Simon, who was the supervisor of the Chamber of Commerce. The money that was to be paid to Benjamin Simon or which Louis Simon said he paid to Benjamin Simon was to be paid into the fund for the purpose of building a terminal. There was nothing else said at any meeting at which I was present as to any other uses to be made of this money. All this money was collected and paid only during the period of the year from the summer of 1927, to about the summer of 1928.

I recall that a certain number of market men and members of the Shochtim Union were indicted in January, 1929. None of the market men in the Bronx nor any of the market men whom I have named here, held any meetings in the Bronx after that indictment. No moneys were collected or paid out after that. After we broke up there, there were no more meetings. We broke up in July, 1928, about six months before the indictment.

Redirect examination.

By Mr. Rice:

The Witness: This terminal that I spoke of, they didn't spend a nickel on it. I do not know whether they used any [fol. 226] of the moneys to fight the unions. I did hear

from market men that some of the money was used to fight the union. It cost me $12,000 to fight the union in 13 weeks. That was many years ago. The market men generally give one week's credit to the retail poultry dealers and butchers, who usually pay Monday afternoon for the previous week. That is the custom of the trade.

[fol. 227] ALBERT WINKEL, a witness called on behalf of the Government, first being duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: In 1927 and 1928 I was a live poultry market man. I belonged to the Greater New York Live Poultry Chamber of Commerce and was President and organizer of it from around June or July, 1926, to August, 1927. I was not a party to the criminal case and am not a defendant in this case. While I was president of the Chamber of Commerce, Charles Herbert and Joe Weiner were on its payroll for a short duration. They were hired for two or three weeks. In the summer of 1927 there were no duties, because they never did anything. I did pay them for two weeks salary, $75 a week. I did not hire them. The Board of Directors told me they hired them. I believe every borough had their representatives on this Board; from the Bronx, Louis Spatz and Max Rosen; from the east side, Louis Weidberg, Charles Mirotznik; from Williamsburg, Samuel Sahn and Philip Soperitzky. I may be incorrect but I am giving you the best of my knowledge. From Brownsville, Dave Hirshon, Morris Gordon; Coney Island, Abe Harrison; Borough Park, Sam Gold. This covered the same period that I was president of the Chamber. Benjamin Simon became supervisor of the Chamber of Commerce around May or June, 1927.

The industry needed what we thought a Landis of the baseball industry, and we had some investigation from the New York State Attorney General's office in regard to our business. During the early part of 1927, and during those conferences I got acquainted with Judge Ottinger, who was the Attorney General, and he told us he thought something

should be done for our industry and he would like to help us. I suggested at one meeting with the Attorney General [fol. 228] that he recommend any man who could be at the head of our industry, and put our business on a profitable basis, and he suggested Benjamin Simon, who was in the Attorney General's office as an investigator. We invited him up to our office. I told him I went to see the Attorney General and he had been recommended to us as a supervisor. We asked him if he could handle this, because he knew through his investigation all about the evils of our business, and we offered him a salary of $300 a week. He commenced work for the Chamber as supervisor in June, 1927.

Shortly after Benjamin Simon was engaged, there was a meeting of the Board of Directors held at which I proposed a fund of $100,000 to establish a credit bureau. We have had quite a little trouble in our business with this credit business of the butcher. We had quite a little trouble in regard to getting along with the labor unions, and in regard to handling our poultry economically, and with those different evils in view, I suggested that a fund be raised of $100,000, to handle these different evils outside of the dues that was coming into the Chamber of Commerce. We figured to collect it over the Jewish holidays of 1927, but we did not know when we were going to collect it or when we were going to stop; there was no time specified. The Jewish holidays was the busiest time of the year, most naturally we would do it at that time, but it was not agreed upon.

At this first meeting that I have been speaking about, I made a proposal to collect one cent a pound from the various markets of Greater New York, to collect $100,000. We had discussed ways and means. It was adopted by a tax of a cent a pound or a half a cent a pound, whatever we [fol. 229] found would be necessary. The taxation of one cent a pound was that agreed on at later meetings in June, 1927. We started making the collections around July, 1927. The Board of Directors as a whole appointed themselves collectors in their respective districts. There was nothing said at this meeting or the subsequent meetings about protecting the various markets from competition, or about compelling customers to buy at particular markets. There was nothing said about demanding receipted bills from cus-

tomers at that time. That was an idea of the credit bureau for which the fund was being created. The different members of the Chamber of Commerce operating wholesale slaughter houses were losing heavy money through unpaid bills. The plan was that if we did have a fund we go out and create a credit information bureau, which would give information to our customers. Whether any of the members of the Chamber of Commerce instituted that plan, I don't know, as I resigned before we had a chance. I do not know that shortly after these meetings were held, retail poultry dealers and butchers all over the City of New York were allocated to various markets. I do not know that this situation existed in Harlem. I conducted my own business and no one interfered with it.

I collected for two weeks in July, 1927, and the moneys I collected was turned over to Benjamin Simon and part of it was deposited. It was $2,000 or maybe $2,800; I don't remember. We had no local association in Harlem.

[fol. 230] By Mr. Rice:

The Witness: I made collections from the market men in the Harlem district, ranging from $75 to $125 a week. I made the following collections: $75 a week from Max Kaplan; $125 from Shiller & Levy; $125 from Albert L. Winkel, Inc.; $100 from Maurice Romain; $75 from 109th Live Poultry Market; $75 to $100 from William Simon; $75 from 121st Street Market belonging to Jacob Reisner and Max Wolas; $75 from Rosen and Witkins of the 122nd Street Market; $75 from Levy and Sherer. I collected for those two weeks and then went on a vacation. When I came back, I found out William Simon was collecting. That money that I collected, I turned over to Benjamin Simon, supervisor, I think it was $2,000 to $2,800, for the two weeks. We were supposed to open up a fund, a separate account in the bank for that fund. The moneys were supposed to be deposited. When I came back, I found the book in the office, and I found I think an entry there on June 13th of $1,300 or $1,400, around half the amount I remember turning in.

I don't know whether Benjamin Simon deposited any of the remainder or what he did with it. He said there was expenses that he incurred before depositing this money and

it had to be paid. He said the expenses were for some sort of political influence, but just what was that political influence, he did not tell me. He said, "Don't ask too many questions". It was after that time that I resigned. I did not like his attitude and I did not ask any more questions. At that time we were not being investigated by the State Attorney General's office or by the Department of Justice. [fol. 231] We were investigated by the Attorney General's office in regard to the Chamber of Commerce and its activities, but that investigation was closed. It was a short investigation. Benjamin Simon made no reference to that investigation. He did say something about paying money downtown, but did not give any other information as to where these payments were being made. I was never given a receipt for this money. I did not ask for a receipt for the remainder of the money. I did examine the deposit book. It was in the office. I asked Benjamin Simon for it and he showed it to me. The deposit book showed the deposit of the sums which I had turned over to Simon of about $1,350.

I do not know where any of the money collected from the various districts went. No one has told me. They all told me, they all turned it over to Simon the same as I did. The total amount that I collected in Harlem, I have my doubts on the amount. I figure at two weeks to be about 12 or 14 hundred dollars each week.

There was discussion that money should be collected from the whole city, to raise $100,000, for the Chamber of Commerce. It was first to be found out how much we could raise from our different boroughs, and then we should find out how long it would take to raise the $100,000. We figured about a thousand dollars from Harlem, and about five thousand dollars a week from all the districts together. That was our budget.

I prepared Exhibit 9 for identification, as a division of the way the money should be collected from the different boroughs, what they should contribute. I don't know what they did contribute. I don't know whether the Board of Directors ever had discussed it. It is probably some little scribbling of my own on a card which means nothing. It [fol. 232] was never put in the minutes or anything. All our meetings were conducted and minutes were put down while I was there. Nothing like that was ever discussed. It

was a plan, trying out to see what we could do. That is all I remember. I discussed it in the meetings that I think we should try and see what we could raise, but I don't know what they did raise or what percentage or anything else. The amount that we figured in the Board of Directors meeting was about an equal division, six boroughs. According to my figures here, there were different percentages. By looking at this card here, it was evidently my idea what was the percentage to be collected from the East Side. The East Side represented 16½ per cent. I most likely told the other members of the Board of Directors that I believed the East Side should contribute 16½ per cent. My best recollection is that I did discuss these percentages with the other members of the Board of Directors. If I was to take this card for a basis of discussion, I would discuss 16½ per cent. From my recollection, I never remember discussing it at all. It is a plan, and we were trying to see what we could raise. If this answers any purpose at all, it is something that I figured out, I think that is the way it came about, that is the way I think it ought to be collected. I still say I don't think I discussed any percentages. I don't think I did. I don't like to be evasive. I am trying to be truthful, but I don't remember discussing that far. We did not get that far. You might construe this paper and it is probably something that I scribbled down myself, but it had no bearing, I assure you, on the collection or anything, or anything to do with the Chamber of Commerce. I don't think we agreed on any certain percentages. I [fol. 233] prepared Exhibit 9 for identification as a schedule of percentages and amounts to be contributed by each district for my own information.

Mr. Rice: I offer Exhibit 9 for identification in evidence.
Mr. Perlman: I object to that.
The Court: Excluded. That is not evidence.

The Witness: I did not hand this Exhibit No. 9 for identification to any of the members of the Board of Directors. How it got out of my possession, I don't know. I don't remember giving it to anybody. I think it was my suggestion that the Board make some allocation of percentages of the collections to be made from the various districts, but whether they approved it or not, I don't remember.

Most likely they found out it was agreeable, if it could be accomplished. I believe they had no objection to it. At different meetings, there is no doubt they discussed the allocation to each district, but the exact percentage—the precise amounts of this allocation, I am now unable to state. I am positive that Exhibit 9 for identification is my handwriting. I don't know when I prepared it. I still say if you did not produce this card, I would have no recollection at all that there was any discussion of percentages or not. I still say there were funds to be raised and each director would see what he could raise in his respective district and bring in a report and we would see how we could tax each member after that. That is what I can remember. This might have been something of my own. I do not remember what percentages were paid by the various boroughs. Those two weeks I was out collecting, and then I went on my vacation, and I came back three or four [fol. 234] weeks later. What transpired, there were not meetings during those two weeks. Both times I went out, I turned the money over to Simon. We had no meetings in the summer. At the time that I went out to collect in Harlem, the other members of the Board of Directors said they were going out to collect in their respective districts. The arrangement was that Louis Spatz was supposed to collect in the Bronx. Louis Weinberg was supposed to collect in the East Side. He said he was going to. Samuel Sahn said he was going to collect in Williamsburg. Sam Gold said he was going to collect in Coney Island. No one refused to do it; they all agreed to do it. Dave Hirshon said that he was going to collect in Brownsville. Morris Gordon also said that he was going to collect in Brownsville. Abraham Herzog agreed to collect in Coney Island. Max Ring was assigned to collect in the Bronx. We agreed to turn it over to Benjamin Simon, the Supervisor. The Chamber of Commerce at that time also received dues from every member. Those dues were ten cents per week for the return of every coop. The different markets came down to the West Washington Market and buy their poultry, and the poultry is taken from the cars that come from out West, and put in coops. These coops are loaded and put on our trucks, and we take these coops and take them away to our place of business. The poultry is slaughtered and then after the poultry is slaughtered, we have the

empty coops in our places. We put these empty coops on our trucks, and return them to the New Jersey Coop Company for which we get 35 cents per coop for every coop we return. We send our bill at the end of every week or [fol. 235] every three or four weeks to the Coop Company for these empty coops.

At the start of forming the Chamber of Commerce, I devised a ways and means of taxing each member so much dues for every coop of poultry he sold, and we agreed upon ten cents per coop, each member to pay to the Chamber of Commerce, as a member, for every empty coop he returned to the Coop Company, and we hired a bookkeeper, and they agreed to deduct from the 35 cents a coop that we were to receive from the Coop Company, 10 cents a coop, and that money was to be paid to the Chamber of Commerce. The market man gets a coop with his poultry and the coops are always the property of the New Jersey Coop Company, or Bernstein & Sons, which are practically the same. If the coop is returned in good condition, the market man is entitled to *to* 35 cents back, but instead of getting 35 cents back, the market man after 1926 got 25 cents back, and the extra 10 cents was paid by the New Jersey Coop Company or Bernstein & Company to the Chamber of Commerce.

Approximately 200 cars of poultry come to New York a week, and there is approximately 90 coops to a car. That makes it 18,000 coops a week. Our income sometimes was $1,500 to $1,600 a week, about $90,000 a year.

I would like to get this on the record: Everybody was not a member. We organized and we got an income of from five to six hundred dollars a week from the ten cents a coop, and I know it went up as high as $1,500 and then it was $1,000, $1,200 a week. This income was in addition to the one cent a pound collection. The salary of the Supervisor was paid out of this coop money. At the time a market man became a member of the Chamber of Com- [fol. 236] merce, he made an assignment to it of his right to collect 10 cents a coop from the New Jersey Coop Company. They were supposed to be on file in the office. The Chamber of Commerce received this income from the 10 cents per coop as long as it was in existence. Just prior to the criminal trial, they stopped receiving ten cents per coop.

Q. 415. Is there any organization in existence today receiving ten cents a coop on this basis?

A. Yes, sir.

Mr. Kaufman: I object to that on the ground that it is immaterial.

The Court: Overruled.

Mr. Kaufman: Exception.

Q. 416. What is the name of that organization?

A. Live Poultry Slaughter House Men's Association.

Q. 417. Who are the members of that association?

A. About 75 per cent of the marketmen in New York City.

Q. 419. Substantially the same members as those that belonged to the Chamber of Commerce?

A. New ones and old ones, yes, sir.

Q. 420. For the most part, are they the same members?

A. Yes, sir.

Mr. Kroppy: I move to strike that out unless the witness states who are the members of the association.

The Court: Motion denied.

Mr. Kroppy: Exception.

The Witness: I was President from September 1 to October 1, 1931 of the Live Poultry Slaughter House Association. This is the organization for which George Minzer is the Arbiter at present.

Q. 420. Were you one of the organizers of this association?

Mr. Kaufman: I object to that on the ground that it is [fol. 237] incompetent.

The Court: Overruled.

Mr. Kaufman: Exception.

Mr. Perlman: Will Mr. Rice tell us whether he claims that this new association violates the law or is illegal.

Mr. Rice: I don't see any necessity in stating that.

Mr. Perlman: If it is a part of the continuance of a conspiracy, we would like to know it. Is it a part of a conspiracy which we are supposed to have continued. I would like Mr. Rice to tell us that, and I will be bound by his statement. Will you tell me that?

Mr. Rice: Not unless his Honor directs.

Mr. Perlman: Is the testimony offered now for the purpose of showing the continuance of an illegal act?

The Court: Proceed. I won't require counsel to commit themselves as to what their contention is going to be. The testimony is relevant.

Mr. Perlman: It is relevant?

The Court: Yes. I cannot tell what the effect will be or whether it will be connected.

The Witness: The Live Poultry Slaughter House Association was formed in the first part of September, 1931. I was one of the organizers.

Q. 433. Did you take part in the preliminary meetings of this association?

A. I did.

Q. 434. At the time it was organized?

Mr. Kaufman: I object to that, on the ground that it is immaterial, and not within the issues.

The Court: Overruled.

Mr. Kaufman: Exception.

[fol. 238] Direct examination.

By Mr. Rice (continued):

Q. Did you participate on the committee with George Skloot at any time immediately prior to the formation of the New York Slaughter House Association?

Mr. Perlman: I object to it on the ground that it is not proof in furtherance of any conspiracy, or the continuance of any conspiracy as set forth in the amended petition of the government here.

The Court: Overruled.

Mr. Kroppy: I object to it on the ground that the name of Skloot is named nowhere in the amended petition; that he is not a defendant in this case; and that any conversation that this witness had with him is absolutely incompetent and immaterial in this case.

The Court: Overruled.

Mr. Kroppy: Exception.

The Witness:

A. Yes, sir.

The Witness: Benny Forsmith, Abe Franzel, Abe Harrison, Morris Gordon were on that committee. At times there were others. Well, at one time we met in Jenks & Rogers' office. Prior to that time we had only had discussions in West Washington Market, at the various times during September, 1931. We did not frame any program at these committee meetings.

Q. I am talking about prior to your meetings at Jenks and Rogers; what did you discuss?

A. Forming a new association.

Mr. Perlman: Just a moment. I object to it as incompetent and immaterial and not within the issues or the proof of continuance of any conspiracy.

The Court: Overruled. I cannot tell.

Mr. Perlman: Exception.

The Court: Unless some different suggestion occurs to me growing out of the development of the case, it may be [fol. 239] put upon the record now that an exception taken by counsel for one of the defendants may be regarded as taken for all of the defendants.

Q. Mr. Winkel, what was said at these various preliminary meetings of the committee of which you spoke?

Mr. Perlman: I object to that on the same ground I offered before.

The Court: Overruled. You have got an exception.

The Witness: This committee, various members of the committee from time to time approached me in West Washington Market, and asked me if I would help them form a new association. We agreed to try to call a meeting, which we did, at the Broadway Central Hotel. And we got quite a few of the members of the Slaughter House men there, and put the question to them, "Would they want to join a new Poultry Slaughter House Men's Association?" I believe that I presided at the meeting, which was early in September, 1931, and we introduced Charles Tuttle, Mr. Mintzer and Mr. Rogers, who spoke to them along the lines of forming a new association, and he read off that

paper to them which I thought you were showing to me yesterday.

Q. Did any of the members of the committee read any papers at that meeting?

A. No, sir, Mr. Rice. If I may help you, may volunteer in trying to bring out, I believe I know who got up that paper, if you want me to help you.

Q. That is Exhibit 10 for Identification?

A. Yes, sir.

Q. All right. State, if you know.

A. That paper I believe was gotten up by George Skloot, secretary of the new association.

Q. When did he prepare this paper?

A. I don't know.

Mr. Kroppy: I object to any further testimony on that document, if your Honor please, because it appears now that George Skloot was not a party defendant to this action. He drew it up, and it is not claimed he was a party to this action. It is utterly irrelevant and immaterial to [fol. 240] this action.

The Court: Overruled.

Mr. Kroppy: Exception.

The Witness: This paper was not read at any meeting that I attended. I know that this paper was prepared by George Skloot from the get-up of it; I imagined it was. I see it is not signed or anything. There is nothing on it.

The members of this committee at that time were all market men. Most of them had been members of the Greater New York Live Poultry Chamber of Commerce. I don't think there were any members of the committee who had not been members of the Chamber of Commerce.

There was absolutely nothing said at any of the committee meeting about the excess number of wholesale markets in the city, or at the meeting which I attended at the Broadway Central Hotel. Nothing was said with regard to the elimination of competitive bidding among the market men for poultry purchases from the commission men.

I attended three meeting held at the Broadway Central Hotel. I was absent from the second meeting. I have no knowledge that George Skloot prepared that paper, Exhibit 10 for Identification. I made it my business to familiarize myself with what had gone on in my absence, and what communications had been sent out in my absence.

At the time I was president of this new association I knew of some documents prepared as a part of the program of that association; some letters that were sent out; but I didn't know of this Exhibit 10 for identification.

The income of the New York Poultry Slaughter House [fol. 241] Association was around $1,500 a week. The source of the income of the new association was dues of ten cents per coop from each member for every empty coop he returned to the New Jersey Coop Company, in precisely the same manner that the Chamber of Commerce received it.

Mr. Kaufman: I object to the comparison.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: Prior to the time that Benjamin Simon became supervisor of the Chamber of Commerce in May, 1927, Major L'Esperance had been supervisor about seven or eight months. At the meeting just before he resigned, the Major told them the way he wanted the thing conducted in a legal manner. He outlined the plans. He knew all the evils in the business. His idea was having a clearing house. That was his idea. He had ideas of dealing with the receivers in West Washington Market, about the elimination of culls in our poultry, and getting 16 ounces to a pound in our purchases and all those various things.

At these meeting- back in 1927 there were talks about not selling to chicken dealers and butchers who had not paid their bill to the proper market man. That has always been our discussion, if there was a way to protect our outstanding accounts, within the law, and one of them was that Major L'Esperance told us that we have a perfect right not to sell a delinquent account, that is, not to sell an account that has been delinquent with a fellow member of our association. He didn't say we had a right to agree. He said we had a right to refuse to sell a bad risk. We only looked to him for advice; there was no objection to his theories. If he said it was so, we were willing to go along those lines. I don't know offhand as to the cause he resigned unless [fol. 242] it was about this compensation that was due him. If you will refresh my memory about it, I will tell you if there was anything else that caused him to resign. One of

The objects of the Company were to carry on the business of Newspaper proprietors and publishers.

An Order for Compulsory Winding Up was made on 15th December 1930.

Cross Examined for Elman:

I have some years experience in registering Companies.

It is a very common practice for a Solicitor's clerk to sign the Memorandum of a Company and to act temporarily as Secretary and for the registered office of the Company to be temporarily at the office of the Solicitor.

RALPH MASSEY.

30 Jan. 1931. QUERTIER LE PELLEY on oath saith:

I am His Majesty's Greffier of the Royal Court of Guernsey and as such I am the Custodian of the Records of the Court. One of my duties is to act as Registrar of Companies registered in Guernsey.

158 I produce certified copies of the Files of Permanent Investments Ltd. Exhibit 129 and Pretoria Mining Estates Co. Ltd. Exhibit 130.

Permanent Investments Ltd. was registered on 26th March 1904 with a capital of £60,000 in 36,000 7% Preference Shares of £1 each and 24,000 Ordinary Shares of £1 each.

The only documents on the File are the Memorandum and Articles of Association, the Certificate of Incorporation, the Annual Returns and an allotment of preference shares.

The first Directors were Frederick Newbery, 15 Copthall Avenue, and Ira C. Ozanne, 5 Court Road, Guernsey.

The registered address of the Company was 5 Court Road, Guernsey.

Ozanne held at first 1 ordinary and 150 preference shares —Newbery does not appear as holding any shares.

7 Signatories held one share each.

Those were the only shares issued until 1928 when the Return shewed that Ozanne's holding had been altered to 151 ordinary shares; and in the return for 1929, he is shewn as holding 36,000 preference shares.

Only 7 of the shares issued up to that date had been issued for cash.

In the return for 1930 Newbery is shewn as holding 100 ordinary shares, and Ozanne 101 ordinary shares.

That return shews that 207 ordinary shares had been 159 issued for cash.

There are no documents on the File shewing the ownership by the Company to any property or rights to property in South Africa, or shewing that Permanent Investments Ltd. had transferred any property or rights to property to Vulcan Copper Mines Ltd. in exchange for 500,000 fully paid ordinary shares.

The Pretoria Mining Estates Co. Ltd. was registered on 6th December 1902.

Apart from the Memorandum and Articles of Association the Certificate of Incorporation and the Annual Returns—there are no other documents on the File.

The Directors were—from 1902 to 1928—Ira C. Ozanne, Sole Director.

The capital of the Company was £200,000 in £1 shares.

The first return of shareholders is for 1909 and shews 149,980 fully paid shares issued to Ozanne for a consideration other than cash.

The Managing Director and Sole Director was Ira C. Ozanne—he continued as such and as the largest shareholder until the Return for 1928 inclusive.

The return for 1925 shews Ozanne as holding 149,983 shares.

The return for 1929 shews Newbery as a director together with Ozanne, for the first time; but not as a shareholder.

In the 1930 return the directors are shewn as Newbery and Ozanne—and Newbery's address is stated as 15 Copthall Avenue, E. C. Newbery as holding 2000 ordinary shares and Ozanne as holding 147,983 shares, and 8 further holdings of three shares each.

It shews that only 7 shares were issued for cash—and that the remaining 150,000 were issued as fully paid up other than for cash.

There are no documents on the file showing that the Company owned any property or rights to property in South Africa or that the Company had transferred any of its 160 property or rights in South Africa to the Rhodesia Border Mining Corporation in exchange for 1,176,000 fully paid shares.

QUERTIER LE PELLEY.

2 Jany. 1931. ARTHUR GEORGE ASHBY, on oath saith:

I am the Secretary of the Committee on New Issues and Official Quotation of the London Stock Exchange.

No application for permission to deal in the shares of Asbestos and Holdings Trust Limited has ever come before the Committee; the same is true of the Vulcan Copper Mines Limited, and of Rhodesian Border Mining Corporation, Ltd.

I produce, Exhibit 29, a Schedule of the names of other companies in respect of which application for permission to deal has been made to the Committee.

I have shewn in Exhibit 29 what action was taken by the Committee in each case. The words "Record withdrawn" and "Record suspended" appear in that Schedule.

"Record Withdrawn" and "Record suspended" mean that dealings are allowed to continue but are not recorded on the marking boards in the Stock Exchange or published in the Supplementary List of Bargains.

ARTHUR GEORGE ASHBY.

162 2 Jany. 1931. FREDERICK FRANCIS SHARLES, on oath saith:—

I am an incorporated accountant and chartered secretary at Salisbury House, London Wall, E. C. 2.

I am Secretary of Fisher's Foils Ltd., whose registered offices are at my offices.

Just after the inception of this Company I was introduced to a Mr. Klein—whose photograph is Exhibit 16.

He was introduced to me in the Board Room at a Board Meeting which Klein attended.

That was sometime in January or February 1929.

Klein was not then registered as a holder of shares in the Company but he was actually the owner by purchase of 2,659,990 shares—1/- shares.

He paid for those shares by two cheques totalling £132,-999.10.0 drawn on the account of H. Wise at the North of Scotland Bank, Ltd., Lothbury.

I never met H. Wise.

There were dealings on the Stock Exchange on those shares shortly afterwards. But not at the time of my introduction to Klein. Application had not then been made.

Klein asked me—as is very usual—to obtain some nominees for him and I agreed to allow about 14 of my clerks to act as his nominees. He had about 97 nominees altogether.

The Committee of the Stock Exchange gave permission for dealings in the shares and dealings began about March or early in 1929.

The shares changed hands at prices varying from 1/- to 5/10½d.

I had no dealings in those shares myself.

So far as I know none of the directors or officials of the Company had dealings in them.

On 6th June I received the letter produced, Exhibit 30, from Butchart Carey Dalman & Co., accountants, and I replied by this letter—copy produced, Exhibit 31.

163 On 17th June I received the letter produced, Exhibit 32, giving the name of the client of Butchart Carey Dalman & Co. as Ellman.

On 26th June I sent them this further letter, copy produced, Exhibit 33, and I received their acknowledgment, produced, Exhibit 34.

On 9th July I sent this letter to Butchart Carey Dalman & Co., copy produced, Exhibit 35, and on 11th July received this letter in reply, Exhibit 36.

On 16th July I received this letter, Exhibit 37, from Ellman.

I received this further letter from Ellman dated 16th July, Exhibit 38, and the letter dated 30th July, Exhibit 39, addressed to the Chairman of the Company.

Ultimately the matter came before the Board sometime in July or August 1930 and the directors agreed to issue a circular letter to the shareholders and in consequence a circular letter, dated 8th August 1930—copy produced, Exhibit 40—was sent to all the shareholders.

The day before the issue of the circular the letter produced, Exhibit 41, was received from Ellman.

On Exhibit 41 are two signatures—one that of Ellman and the second is "for and on behalf of London Exchange Ltd.—E. A. Woodley—Secretary."

As a result of the issue of the circular a number of applications were received from shareholders for shares, enclosing the necessary remittances—transfers were executed and registered, and the money received was paid into a separate ac-

count called B accounts at the North of Scotland Bank, Limited, Lothbury, amounting to £14,354.15.0 for the purchase of 287,095 shares.

The shares so sold were all shares that had been issued to nominees of Mr. Klein.

The Committee of the London Stock Exchange suspended markings in the shares on the 15th August and in conse-
164 quence a letter dated 19th August—copy produced, Exhibit 42—was sent to Ellman.

His reply is produced, dated 20th August—Exhibit 43, and on 23rd August a payment was made direct to Ellman and a further payment on 19th September—£13,300 in all.

In the B account is an amount not yet paid over of £346.16.9 in respect of 6 or 7 shareholders. That money is retained with the concurrence of Ellman.

I called at Klein's office at 2, Broad Street Place. I saw there, I think the person whose photograph is No. 2 on Exhibit 17—the accused Spellen.

The highest marking the shares went to was 5/10½d. That was in the very early days of the Company.

In my opinion the value of the Company's shares now is about par—1/-.

Cross-Examined for Elman:—

The Company has a large modern factory at Wembley and a very good business indeed—in the manufacture of chocolate foils and patent packing machines.

In the early life of such a company the value of the shares is very speculative.

The shares were being purchased at 5/10d. during March and April 1929.

In July 1930 the market price was just over par, I believe, so that the offer to sell at par was a reasonable offer.

Since the end of March 1930 the shares have never gone much above par.

FREDERICK FRANCIS SHARLES.

165 2 Jany. 1931. JOHN WILLIAMS, on oath saith:—

I am a Company director and live at 5, Shepherd's Hill, Highgate.

Since 23rd May 1930 I have been Chairman of Fisher's Foils Ltd.

As a result of correspondence between the Secretary of that company and Messrs. Butchart Carey Dalman & Co., it was arranged that I should call and see Elman and I did so sometime in July 1930 at his office, 27 Lincoln's Inn Fields.

I was instructed to get some particulars as to the members of the American group for whom he was trying to sell the shares in the Company.

I asked Elman for the information and he declined to give any further information. He said his group were dissatisfied with the way the Company was being run and if necessary they would call an extraordinary general meeting and have the affairs of the Company investigated.

Exhibit 39 confirms what Elman stated to me at the interview.

I then called a Board Meeting and Elman's suggestion was considered and it was decided to agree to submit his proposal to the shareholders by a circular to be sent out by the Company. Exhibit 40 is a copy of the circular which was sent out. The terms of that circular were settled by the Board. Elman had nothing to do with that.

Upon receipt of the letter, EXHIBIT 41, from Elman that letter was put before the Board. The circular letter was the result.

Cross-Examined for Elman:—

Before the circular was sent we took legal advice—not from Elman—and on that advice the circular was drawn up and sent out.

JOHN WILLIAMS.

166 2 January 1931. FREDERICK HENRY MANNING on his oath saith:—

I am a Clerk at 3, Tokenhouse Buildings, E. C. I have a half commission brokerage connection with Messrs. James & Co. at that address. They were brokers to the Sunbeam Presswork & Conveyors Ltd. and after the incorporation of that Company they were communicated with by the principal shareholder, Mr. Dalton Parsons.

Messrs. James & Co. were requested by him to apply to the Stock Exchange Committee for a quotation and permission to deal in the shares.

In January 1930 I called at the office of Jenkins Baker & Co., Solicitors, 3 London Wall Buildings, on other business —and while there Mr. Sleigh, a partner in that firm, said he had a client who was willing to purchase a block of sound shares that were quoted on the Stock Exchange.

I made the usual inquiries as to the client's stability from Mr. Sleigh and received satisfactory answers. The client's name was not at that time disclosed to me.

I then approached Mr. Dalton Parsons who agreed to sell a block of shares to Mr. Sleigh's client—whose name was still undisclosed.

An agreement was drawn up and completed—produced EXHIBIT 50—between Mr. Dalton Parsons and myself—under which 25,000 shares were to be taken up at par—2/- within 14 days, and including various options on 475,000 shares at prices from 1/3d. to 2/3d. to be taken up as required, all shares in Sunbeam Pressworks and Conveyors Ltd. belonging to Mr. Dalton Parsons and the rest of the directors.

Up to roughly about this time I had no knowledge of the identity of Mr. Sleigh's client.

When confirming the terms I became aware of his identity from a draft agreement submitted for my signature, in which the client's name was given as A. J. Klein. That was some time in the latter part of January or beginning of February 1930.

Klein was present then.

Exhibit 16 is a photograph of him.

167 I asked Klein what he intended to do with the shares, he said he intended to take the market in hand and "put them better."

He told me definitely that he was acting for himself alone.

Klein handed me a cheque for £2,500 for the 25,000 2/- shares. There was no payment then made for the options.

I paid the cheque into my own account at the Midland Bank, Treadneedle Street and then drew a banker's draft for the same amount less £530 owing to me and £50 commission and handed the draft to the Westminster Bank, Threadneedle Street who held the shares against payment.

Up to that time there had been occasional markings in the shares of the Company—from 2/- to 2/3 a share.

The shares went into the name of, I believe, W. Knight, a nominee of Klein's.

After this transaction the shares became active and on one day they became so active that the Stock Exchange Committee stopped dealing with them. The shares went to 5/6d. or 6/-.

From the agreement to the suspension was only a space of a very few days.

I never called at Klein's office and I knew of no person associated with Klein.

Later Klein approached me as to the purchase of some share in "Sim's Motor Unit." Information had come to my knowledge on which I refused to have any further transaction with him.

168 The options on the 475,000 shares were not taken up except as to 35 to 40,000 which Klein took up.

Cross-Examined for Elman:

When I say the Stock Exchange stopped dealings I mean dealings and markets.

Buying shares in this way in order to "put them better" is a general practice.

These shares were not sold through my firm, except as to three sales. I took delivery for the whole amount that were sold and I received payment for them.

Re-examined:

In respect of these three sales I took payment on behalf of Klein and Klein received the money.

FREDERICK HENRY MANNING.

169 2 January 1931. REGINALD HARRINGTON BRETT on his oath saith:—

I am a director and secretary of T. W. Webb & Co. Ltd, 5 Moorgate Buildings, E. C.

I am now the sole director.

Formerly Mr. Frederick Smith was also a director—until about a month ago.

I nominated myself to be a director—I knew T. W. Webb & Co. I did some work and became a director.

T. W. Webb & Co. Ltd., consists of the shareholders and myself.

No other person has an interest in the Company.

I am the only person who takes an active part in the business.

I know the accused Newbury. I have business associations with him, in the buying and selling of shares.

I have been employed by him on all sorts of companies.

I was employed by him before I became a director of T. W. Webb & Co. Ltd.

Newbury has no interest in that Company.

I was employed by Newbury at 15, Copthall Avenue.

I came on the board of T. W. Webb & Co. Ltd. because I knew Mr. T. W. Webb and Newbury said I was to go on the board. It was owing to him that I got on the board.

I bought 20 shares, cash was paid for them. I don't know who paid. I did not.

I don't know how Smith got on to the board.

Smith was only a nominal director, simply signed cheques. I did the whole business.

I had known Newbury two years when I came on to the board, during which two years I was employed by him.

I know a man named Sidney Brignell, he is associated with Mr. Newbury, almost as his private secretary.

This (Exhibit 51) is a copy of a letter from T. W. Webb & Co. Ltd., to H. Wise dated 11th August, 1930. I signed that letter at Brignell's request. He being Newbury's private secretary. With that letter was a contract note, also produced.

T. W. Webb & Co. Ltd. had not then received the £33,000.

The contract note was made out by Brignell and I signed it.

T. W. Webb Co, Ltd. had at that time the right to sell the 1,176,000 shares in the Rhodesia Border Mining Corpora-
170 tion.

I presume we had.

I was simply doing what Brignell, Newbury's private secretary, asked me to do.

At that time Smith was also a director, but he had nothing to do with the matter. His directorship was purely nominal.

That transaction has not yet been entered in the books of T. W. Webb & Co. Ltd.

On 21st August 1930 I received a telephone call and went to 15, Copthall Avenue, the offices of Newbury, those offices are under the name of African Construction and various other companies, including Mezzanine Syndicate.

I was sent for and went there. I saw a man named Spiro and Newbury.

Spiro used to come there a great deal.

I was frequently there, backwards and forwards.

Spiro on this occasion in Newbury's presence asked me to come along in a cab. I did not know where to. I was to collect £33,000 and bring it back to the office.

I went with Spiro in a cab to 27, Lincoln's Inn Fields.

Produced Exhibit 52 is a letter of 21st August 1930 signed by the accused Newbury which was written before the journey. It is written on paper headed "The Pretoria Mining Estates Co. Ltd."

This is a copy of a letter signed by me on behalf of T. W. Webb & Co. Ltd. dated 21st August 1930 to H. Wise, Exhibit 53.

This is a copy of a letter from T. W. Webb & Co. Ltd. to Elman of 21st August 1930, which was signed by me on Newbury's instructions, Exhibit 54.

I know nothing of the Pretoria Mining Estates Co. Ltd. or who the directors are.

I did not know whom I was going to see when I went in the Cab. I was shewn into a private office and saw Mr. Elman there.

I believe I signed the two letters Exhibits 53 and 54 at 27, Lincoln's Inn Fields. We took them with us, on Newbury's instructions.

When we got into the office Elman said he expected to see Mr. Newbury.

Spiro said Mr. Newbury was doing the business in a different manner—through T. W. Webb—and his presence was not necessary. Elman agreed.

My instructions were to collect £33,000 either by notes or by cheque.

Spira said that Elman's cheque would do.

Elman said he would rather do it by notes.

He rang for his clerk, signed a cheque for £33,000, which his clerk took and returned with £33,000 in notes of £1,000 downwards.

Elman counted them and handed them to Spiro, who gave him back £4,000 for which Elman gave me the receipt produced Exhibit 55. Spiro and I then left.

Spira had the £29,000.

We returned to 15, Copthall Avenue and Spiro went into Newbury's office. I did not.

Brignell was to let me know what was done with the £29,000. He did not do so.

After 4 p. m. the Manager of the Midland Bank, Moor-
172 gate, telephoned to me and I afterwards spoke to Brignell who verified that the notes were at the bank in the account of T. W. Webb & Co. Ltd.

On 25th August 1930 on Brignell's instructions I obtained a bankers' draft for £28,000 payable to the Victoria Mining Estates Co. Ltd. Guernsey which I handed to Brignell. That left £1,000 in Webb's account.

They were entitled to a commission of 1%.

I did not deal at all on my own volition in these transactions, but entirely on instructions from Newbury, through whom I got on the board of T. W. Webb & Co. Ltd.

Recalled next page.

16 Jany 1931. *Recalled and Cross-Examined for Elman:—*

My interview with Elman to collect £33,000 was in August 1930.

I made a statement to the Director of Public Prosecutions in December 1930.

173 I have a clear memory of the conversation. It was such a large amount.

Most of the conversation was between Spiro and Elman.

I did see Elman draw a cheque. I don't know whom it was in favour of. I did not endorse it. I think I am sure of that. I am sure.

I do not remember seeing Elman take a cheque and write "cancelled" across it.

Produced is the original letter of which Exhibit 54 is a copy.

It is Exhibit 116.

When we took it to Elman's office the words "and to us" were not in that letter.

Spiro produced that letter at Elman's office.

I don't remember Elman asking who "Pretorio Mining Estates Co. Ltd." were. I don't remember Spiro saying they were the Vendors.

I don't remember saying, "I have not rendered any services to the Pretoria Mining Estates Co. Ltd." or anything to

that effect, nor Spira saying, "You are rendering services to me and we are working through Webb & Co."

I do remember Elman writing "and to us" in the letter after the words "to them" and I initialled the alteration. I do not remember any such conversation as that just put to me—leading up to that alteration.

Looking at Exhibit 116 I say now that the words "and to us" are in my writing.

I still say I do not remember any such conversation. I never heard it.

174 I did not know that Elman had to pay out some of the £4,000 to others. Most likely the reference in Exhibit 116 to "and your associates" means that.

I do not remeber endorsing any cheque. I did not endorse a cheque.

The money was handed to Elman first. He then handed it over to Spiro, who handed back £4,000 to Elman, for the services rendered "by him and his associates" as in Exhibit 116.

I did not see one of Elman's clerks at that interview, except the clerk who came up for the cheque. Mr. Elman's clerk was only present for the purpose of taking the cheque and bringing the cash. He simply came in and went out again. That was the only clerk of Elman's who was there at all.

The only people present were Spiro, Elman and I.

Further Added on Reading Over:—

I wish to add that I do not remember endorsing any cheque.

I remember the interview because the cheque was for such a large sum of money. I do not remember whether I endorsed a cheque for £33,000.

REGINALD HARRINGTON BRETT.

2 January 1931. CYRIL THOMAS NEWMAN on his Oath saith:—

I am an examiner in the Department of the Official Receiver in Companies Liquidation, 33, Carey Street, and
175 have been investigating the affairs of Broad Street Press

Ltd. and Vulcan Copper Mines Ltd., and Throgmorton Press Ltd.

As to Vulcan Copper Mines Ltd.

A petition for winding up was presented on 8th November 1930 and an order was made on 12th November appointing the Official Receiver provisional liquidator.

On 24th November a compulsory winding up order was made.

The Company was registered under the laws of Southern Rhodesia as a public Company with limited liability on 28th April 1930.

The Registered Office was at Buluwayo and London Office at 25, Victoria Street.

Article 45 of the Memorandum deals with the powers of directors, vesting the management of the business in the directors.

I produce EXHIBIT 56 the Minute Book of the Company.

The assets of the Company consist of £28,303.2.9. the balance standing to its credit at Barclays Bank in London and a sum at present unknown standing to its credit in its bank at Buluwayo.

In the books of the Company there is an item of £830 paid to A. J. Klein on 9th July 1930 in respect of the preliminary expenses of the Company.

I produce EXHIBIT 57 the cheque for £830.

I produce EXHIBIT 58 a contract between Permanent Investments Ltd. and Vulcan Copper Mines Ltd. of 27th June 1930, for sale to the Vulcan Company of mineral rights in Rhodesia and S. W. Africa.

Two of the directors of Permanent Investments Ltd. were Ira Clement Ozanne and F. Newbury.

Apart from the contract Exhibit 58 no documents have come into the official receiver's possession relating to
176 the possession by Vulcan Copper Mines Ltd. of any such properties as are referred to.

This is a letter dated 18th November 1930 from Alexander Fraser, Buluwayo to the Secretary of Vulcan Copper Mines Ltd. in London produced EXHIBIT 59.

As to Broad Street Press Also

I produce EXHIBIT 60 a cheque dated 3rd July 1930 for £33,000 drawn by Broad Street Press to Vulcan Copper Mines Ltd., for the purchase price of 66,000 shares of Vulcan Copper Mines Ltd. at 10/- each.

As to the contract Exhibit 58 the consideration was a payment of £512,000 payable as to £12,000 in cash and as to £500,000 in cash or shares at the option of the Vulcan Company.

Produced is a letter of 3rd July 1930 from Permanent Investments to the Vulcan Company signed by Ira C. Ozanne over a 6d. stamp, EXHIBIT 61, nominating Broad Street Press Limited to receive an allotment of 1,000,000 shares payable under the contract Exhibit 58. No consideration is mentioned.

From my investigation of the affairs of Broad Street Press I find that Broad Street Press sold 1,273,643 Vulcan shares, value £694,452.7.6. Those are more shares than the nominal capital of the Company. The sales were effected by means of the issue of circulars and canvassers.

Broad Street Press Ltd. in fact received £694,452.6. for the shares.

There were certain cancellation and repurchases which reduced the amount realised to £667,961.11.0.

I find that certain shares were sold as Vulcans and afterwards charged to Rhodesia Border Mining shares.

The explanation given was that there was to be an amalgamation of the two companies.

I produce a cheque dated 30th June 1930 drawn by Broad Street Press Ltd. to Permanent Investments Ltd. for £33,000 EXHIBIT 62. I have not discovered any explanation of that payment.

Assuming that to be for shares that would make a total of £66,000 paid to Vulcan and Permanent Investments which Broad Street Press Ltd. paid altogether for 1,237,013 shares which they sold for £667,961.11.0 a profit to Broad Street Press of about £600,000 in about 3 months.

Recalled next page.

16 Jany 1931. *Recalled*:—

re Vulcan Copper Mines Co.

The order for compulsory winding up of this Company was made on 24th November 1930.

178 The statement of affairs dated 2nd January 1931 showed assets:

Cash as bankers	£ 28,275.12.3
Other property:	
Interest in Mines in Rhodesia and S. W. Africa purchase price as per contract	£512,000.0.0
Estimated to produce	£ 6,000.0.0
Total assets	£34,275.12.3

It shewed liabilities:

to 6 unsecured creditors	£ 400. 1.6
Other liabilities	2 6,000. 0.0

being the reduced balance of cash consideration payable to the Vendors, making total liabilities, expected to rank for dividend, £6,400.1.6 and after deducting £7.13.0 due to preferential creditors there was an estimated surplus of £27,867.17.9 to meet the liability to shareholders of £533,200 leaving a deficiency of £505,332.2.3.

As to the item of £6,000, the directors stated on the statement of affairs "Although we believe these properties have a potential value far in excess of this figure we are unable to state what they are estimated to produce and merely quote this sum which it is understood the Vendors will accept as balance of the purchase consideration."

re Broad Street Press:

A petition for the winding up of this Company was presented on 27th October 1930 by Miss Oreun on the ground

179 that she had been induced to part with £6,000 on false representations made by the Company for investment in shares of Vulcan Copper Mines Ltd.

A winding up order was made on 10th November 1930.

The Official Receiver was appointed provisional liquidator.

According to the Return in Somerset House all the capital of £5,000 was issued in shares fully paid.

I have had all the books and documents of the Company at my disposal.

The shareholders at the date of the winding up were J. H. Osborn (Secretary) A. Paris and A. S. J. Osborn.

The books shew no receipt from those persons of any money for shares.

Produced is the Company's Barclays Bank Cash Book, EXHIBIT 63.

It shews the receipt on 17th September 1928 of £5,000 which is presumably as payment for shares.

I have traced £5,000 paid into Barclays Bank, Bishopsgate on 17th September 1928—to the Company's account.

That is the £5,000 with which the account was opened.

I produce the minute book of the Company, EXHIBIT 64, recording the first meeting of directors on 12th September, 1928 at 27, Lincoln's Inn Fields, present: A. Paris, A. S. J. Osborn, Elman and J. H. Osborn, and Paris and A. S. J. Osborn were appointed directors, and A. S. J. Osborn, Chairman.

No other directors were ever appointed.

On 12th September 1928 was a meeting of shareholders at which remuneration of directors was fixed at £100 per annum each.

The books of the Company shew that £2 a week was paid regularly to A. Paris, and to A. S. J. Osborn £2 a week from the commencement of the Company to 16th April 1929.

£4 a week from them to 11th January 1930 and £6 a week subsequently.

There is no authority in the minute book or elsewhere for the payment to A. S. J. Osborn of any sum in excess of £100 a year.

At the meeting of directors on 12th September 1928 J. H. Osborn was appointed Secretary *pro tem.*

No other person was ever appointed Secretary.

The books shew no payment to J. H. Osborn.

Those three persons constituted all the officers of the Company.

At the same meeting of directors Elman was appointed Solicitor to the Company, with remuneration of ordinary professional charges.

180 Elman has acted as solicitor to the Company since that time.

On 14th May 1930 the minute book shews that Reid Shar-

man & Co. were appointed Solicitors to act in consultation with Elman.

They are the only Solicitors shewn in the minute book to have acted for the Company.

The books shew only one payment to Elman, £250 on 7th October 1930.

That £250 was in respect of a bill of costs rendered by Elman to the Company on 7th October 1930 produced with covering letter, EXHIBIT 65.

The costs were incurred in respect of actions by the Company against the proprietors of "Truth" and others, for libel, and the costs of the action brought by A. S. J. Osborn against "Truth Publishing Co." and others for libel.

Those actions never proceeded to judgment. The bill of costs states, "Ultimately you decided not to proceed with such action."

181 There is no authority in the minute book to institute these actions.

Mr. Elman registered the Company. The registered offices were at his address.

The books shew no payment to Elman in respect to the costs of registration.

Article 67 of Table A provides that the business of the Company shall be managed by the directors.

My investigation shews that the directors took practically no part in the conduct of the Company's business. They never managed the Company.

J. Walker, A. J. Spellen, H. Guest, H. Green (or Geen) A. J. Klein and Moncrieff acted in the management of the business of the Company.

J. Walker gave instructions to Elman to register the Company. I produce a letter from Elman to the official receiver of 3rd December 1930, EXHIBIT 66, to that effect.

The payment of £100 referred to in Exhibit 66 was made on 4th September 1928 by A. J. Klein on behalf of Walker. I produce a letter of 5th December 1930 from Elman to that effect, EXHIBIT 67.

I have found no correspondence to and from Walker.

The books shew payments to Walker, but no receipts from him.

The payments to Walker are: 26th September 1928, £518.10.11. postage a/c G.P.O. 27th September 1928 £957.8.7 Cash, repayment of loan.

The cash book shews that up to 27th September 1928 there had been only one loan of £5,000 on 17th September 1928. That payment of £5,000 has been treated as £5,000 capital. If the £957.8.7 is to be treated as repayment of part of that £5,000 loan, the £5,000 could not, certainly not as to the whole of it, have been paid for capital.

The next payment to Walker is 27th September 1928, £1,250, by Hillman & Co.

On 6th September, £600, on 18th September £300 and on September 18th £350 were paid by Walker direct to W. H. Hillman & Co. Those three sums make up the £1,250 and were in respect of items:

City News & Addressing	£715.18.7
Sundries	£203. 6.2
Paper maker on a/c	£350. 0.0

The next payments to Walker are:

9th Octr. 1928, £520, by Postage a/c.

9th Octr. 1928, £ 25, by Petty Cash.

12th Octr. 1928, £125, Salaries and expenses.

I produce the paid cheques in respect of those six payments, EXHIBIT 68.

182 The cheque for £125 is drawn to Cash, but endorsed J. Walker and cleared through Barclays Bank, Fenchurch Street.

There are two other cheques dated 26th October 1928 drawn to cash, one for £143.1.6 and the other for £154.2.11 both cleared through Barclays Bank, Frenchurch Street, not endorsed, EXHIBIT 69.

The books of the Company shew payments to Spellen as follows:

23rd July 1930: £6,000, by cheque on Midland Bank, EXHIBIT 70.

There are other amounts which went into Spellen's account at the National Provincial Bank, Cheapside:

23rd April 1930, £245 to Smith Dalby & Welch, per H. J. S. The cheque was drawn to cash and paid through the National Provincial Bank, Cheapside.

The cash book, produced EXHIBIT 71, shews on the following day, 24th April, payments to

Smith Dalby	£ 238.11.8
Kinsler	£ 812.17.6
Kinsler	£1302. 6.6
Total	£2353.15.8

The cheque for £2,353.15.8 was drawn to cash and cleared through National Provincial Bank, Cheapside.

Exhibit 71 is the Company's Midland Bank No. 1 Cash Book.

I produce also the Company's Midland Bank No. 1 Cash book, EXHIBIT 72, on which appears the payment by cheque to Spellen, Exhibit 70.

Those items to Smith Dalby & Welch are not included in Smith Dalby & Welch's account, to Broad Sttreet Press Ltd. They rendered their accounts to Mr. Spellen at 42, Cornhill.

I produce the wages books EXHIBITS 73 and 74 shewing weekly payments to Spellen of £10 a week.

Also the miscellaneous book purporting to be a Salaries Book produced, EXHIBIT 75, kept by Moncrieff, shewing payments to unnamed persons, numbered 1, 2 and 3 of £20, £20.10.0 and £12 a week.

The totals of the weekly payments in Exhibit 75 are the same as the totals of the weekly payments in Exhibits 73 up to 9th February 1929.

Exhibit 73 shews the first three entries, for the week ending 29th December Spellen £10, Detrez £15, Moncrieff £10, and the total for that week is £165.3.6 including expenses, postages, etc. £27.

Exhibit 75 shews for the same week a total of £165.3.6
but it does not contain the item expenses postages etc.
184 and the first three items read No. 1 £20, No. 2 £20, and
No. 3 £17 with a note "overtime".

Among the Company's papers I find a document dated 30th July 1930, produced EXHIBIT 76, shewing a receipt by Augustus Young, Stockbroker, of £50,000 war bonds for safe custody and £5,000 war bonds of £1,000 each to be exchanged for one bond of £5,000. It contains also a receipt by Spellen for the return of bonds for £5,000.

I produce a letter from Spellen of 24th October 1930 to Augustus Young, EXHIBIT 77.

I produce a copy of a letter, EXHIBIT 78, of 10th October 1930 to H. Rowbotham, bearing the intials H.J.S./F.F. attached to the letter is a part of a label, addressed "Norman, 2 Br..... L.....". the rest of the address is missing.

I produce EXHIBIT 79, a receipted account of John Morgan & Sons Ltd. 42 Copthall Avenue, of 7th May 1930 addressed to Spelling, 52 Cornhill, relating to the removal of fittings to 52 Cornhill and writing letters "F. Jackson & Co." on the office door at 52, Cornhill.

In the cash book, Exhibit 71, is an entry: "By Morgan, £27.11.9" which is the amount of the account Exhibit 79.

I also found carbon copies letters written to Augustus Young from 42, Cornhill bearing the reference H.J.S./M.P. forwarding securities for sale, and some of them shewing the names of Clients, Exhibit 80, and I find that the proceeds of the securities were used in payment of shares in Asbestos & Holdings Trust Limited.

I produce also the acknowledgements of Augustus Young of those letters, addressed to A. J. Klein, also in Exhibit 80

I produce two memorandum books, EXHIBIT 81 containing entries shewing a record of orders received from clients
185 for the purchase and sale of securities from 6th May 1930 onwards. Those books appear to be in Spellen's handwriting.

The cash books do not record any payment to or receipt of any money from H. Guest.

In the private ledger is an account headed Guest. 16 items are debited to his account in March 1930, amounting to £31,875.12.7.

The cash book shews those as payments to James, Asbestos Consolidated Mines, H. Geen, Manning, A. Young and M. Singer.

There is no credit to that account.

At the foot of it is a note that all the above items are charged on Guest's instructions.

The private ledger of the Company is produced, Ex. 82.

I produce, EXHIBIT 83, a bundle of bought and sold contract notes from Augustus Young on the account of H. Guest, relating to transactions of Broad Street Press.

I produce, EXHIBIT 84, two receipts from Augustus Young

of 7th and 25th August 1930 acknowledging the holding for safe custody on Guest's account of £35,000 war bonds.

As to H. Green or Geen.

The Company's cash books and paid cheques shew payments to H. Geen as in Schedule produced, total £14,042.15.0, Exhibit 85.

I produce a bundle of contract notes from Ashford & Co. on H. Green's account for purchase of Edison Bell shares to the value of £14,000, Exhibit 86, and a number of slips from Ashford & Co. to Harry Green relating to the purchase of shares in Fisher's Foils and Swears & Wells, also in Exhibit 86.

Produced Exhibit 87 are the paid cheques referred to in the Schedule, Exhibit 85.

As to Klein:

The cash books and paid cheques shew payments to A. J. Klein as shewn in the Schedule produced Exhibit 88, totalling £86,959.5.3.

The paid cheques are produced Exhibit 89, paid into Klein's account with Brown Shipley & Co.

On the Schedule Exhibit 88 is one item of £120 in 1928, the others are all from March 1930 to 22nd August 1930.

I produced a letter of 6th June 1930, Exhibit 90, from Augustus Young to Klein, acknowledging the receipt for safe custody of 4,500 Radio Corporation of America Common Shares.

I produce a number of contract notes from T. Gordon Hensler & Co. to Klein, between March to September 1930, Exhibit 91, and from Ashford & Co. and Crew & Co. to Klein, all in Exhibit 91.

As to Moncrieff:

Apart from a payment of £7.7.6. on 20th October 1928 Moncrieff appears to have received only a weekly wage.

As to the Business of the Company:

The Company published a 6d. weekly financial paper from 19th September 1928 to 15th October 1930, first under
186 the name of "City News and Stock Exchange Observer" up to 5th June 1929. Each copy bore the name "A.

S. J. Osborn, Editor". From 12th June 1929 to 31st July 1929 the paper appeared as "Finance" with which is incorporated City News and Stock Exchange Observer".

On 7th and 14th August 1929 the title was "Finance without that addition.

From 21st August 1929 to 15th October 1930 it appeared as "Finance and Stock Exchange Observer".

The name Norman D. Spencer first appears as editor on the issue of 11th September 1929 and thence on each issue to the last.

I produce one copy of each number of the paper between 19th September 1928 and 15th October 1930, EXHIBIT 92.

The issue of 23rd April 1930 first contained a "Stock & Share Department" which was continued in each number after that.

At a meeting of 13th October 1930 at Elman's office the minute book shews a resolution that a draft agreement for sale of the Company's business to Throgmorton Press Ltd. was approved for sealing.

I produce EXHIBIT 93 an agreement executed by Throgmorton Press Ltd. shewing that for £4,785 paid by Throgmorton Press Ltd. to Broad Street Press the Company
187 sold the good-will of its business of a newspaper proprietor, the copyright of Finance & Stock Exchange Observer, list of subscribers and the file of correspondence with its subscribers and readers, furniture and office equipment at 2 Broad Street Buildings and £1,497.6.11, being the amount standing to the credit of Broad Stret Press Ltd., in their No. 2 account at Barclays Bank, Bishopsgate.

The Cash Book, Exhibit 63, shews the receipt by Broad Street Press of £4,785 under date 17th October 1930.

I produce the Cash Book of Throgmorton Press Ltd., EXHIBIT 94. It shews under date 15th October 1930, a receipt of £6,000 also the pass book of that Company, Exhibit 95, shewing the payment in of that sum into the National Provincial Bank Ltd., Finsbury Circus Branch.

On the same date is a payment out of £4,785 for a banker's draft.

I produce that draft, EXHIBIT 96.

The £6,000 was in Bank Notes, according to the Pass Book.

I have traced that £6,000 as coming from the account
188 of H. Wise at the North of Scotland Bank Ltd., drawn out of that account by A. J. Klein.

Up to the end of February 1930 Broad Street Press apparently confined itself to running the paper "Finance" and selling various speculative shares through the market.

I have closely examined the Cash Book. Up to the end of December 1928 subscriptions to the paper amounted to £613, and the Company's total receipts amount to £29,613.

The difference between those two figures is represented by loans of £28,000 and other miscellaneous items.

I produce a book entitled "Stock Exchange"—"It's Methods and Practice" by A. S. Osborn, EXHIBIT 97. It appears in the Company's newpaper as sent out early in 1929 and the accounts shew that up to 19th February 1929 over 36,000 copies had been distributed to clients.

An analysis of the cash books for 1929 shews the total receipts of the Company £83,045, of which £78,000 is shewn as loans.

The receipts for 1930, up to October, total £1,622,926.16.0. of which £1,619,736.12.5. was received during the 8 months March to October.

The receipts from March to October were cash received from Clients and proceeds of sale of shares and securities received from clients. There were no loans during that period.

I produce EXHIBIT 98 a schedule shewing details of the monthly receipts.

The cash book, Exhibit 63, shews in January and February three cheques amounting to £1,720, *i. e.*

17 Jan.	£500
30th Jan.	£500
22nd Feb.	£720

described as cash.

I have traced those cheques as coming from the account of H. Wise at the North of Scotland Bank, drawn by Klein.

The total receipts of the Company from incorporation to end of February, 1930, were £115,848 of which £108,720 is shewn by the books to have been loans.

For March, 1930, the receipts were £102,352.5.9, no part of that being shewn as loans.

I find no loans from March to October, 1930. The bulk of that £102,352.5.9, represents moneys received from clients or proceeds of sale of securities received from clients for re-investment in Asbestos & Holdings Trust Ltd.

I find from the correspondence between the Company and its clients that about 10th March, 1930, clients were advised to invest in Asbestos & Holdings Trust Ltd. shares at par 5/-.

Between March and June, 1930, the Company sold 1,072,666 shares in Asbestos & Holdings Trust Ltd. for £297,405.18.6. and I trace two amounts paid by Broad Street Press to Asbestos & Holdings Trust Ltd., on 20th March, 1930, £30,000 and 24th June, 1930, £22,500. I produce the two cheques EXHIBITS 99 and 101.

(Note: There is no EXHIBIT 100.)

Just prior to that purchase by Broad Street Press, Broad Street Press had bought back from clients Sunbeam Presswork & Conveyors Ltd. shares to the value of £4,734.4.0. Deducting that figure from £297,405.18.6. because the books shew that the Company got those shares from clients instead of cash, the amount received by the Company is £292,671.14.6.

The net profit to the Company is therefore £240,171.14.6.

Up to the end of February, 1930, the banking account of Broad Street Press was at Barclays Bank, Bishopsgate.

On 21st March, 1930, a further account was opened at the Midland Bank, Gray's Inn, at which Elman had his account.

I produce three circular letters undated relating to Asbestos & Holdings Trust Ltd., Rhodesia Border Mining Cor-
189 poration Ltd., and Vulcan Copper Mines Ltd., EXHIBITS 102, 103 and 104.

I produce a letter of 10th March, 1930 to John M. Maxwell, EXHIBIT 105 and another of 5th March to W. Lenton, EXHIBIT 106 both signed Norman D. Spencer and a further letter to Maxwell of 29th March, EXHIBIT 107.

Towards the end of May, 1930, according to the books the sale of Asbestos shares practically ceased and on 28th April 1930, Vulcan Copper Mines was registered in Southern Rhodesia.

On 21st May, 1930, I find that clients of Broad Street Press were circularised, as in copy circular produced EXHIBIT 108. The shares mentioned in that circular had not been bought by the Company in large numbers.

I produce a letter to Mr. Maxwell of 27th May, EXHIBIT 109.

I find that Broad Street Press sold 233,453 Edison Bell shares for £167;567.10.4. mostly at 14/- a share.

The majority of the contracts are dated round about 26th May.

I find that on 12th June the Company sent prepaid telegrams to the purchasers of Edison Bell shares advising the sale of Edison Bell shares at 23/- and reinvestment of the proceeds in Vulcan Copper Mines at 10/- and as a result Broad Street Press purchased from its clients 211,669 Edison Bell shares at 23/- for £241,149.14.0 shewing a profit to clients and a loss to the Company of £73,633.3.8.

190 The Company sold 247,137 Vulcan Copper Mine shares to clients at 10/- as a result of the Edison Bell transaction.

The Company sold 60,729 Guy Motor shares at 15/- for £45,894.15.6. and repurchased 59,610 shares at 19/- for £56,-627.4.0. shewing a profit to clients of £10,732.8.6. the bulk of which was reinvested in Vulcans.

By the end of July, 1930, the sale of Vulcan Copper Mine shares had practically ceased and in the middle of July Clients were advised to buy shares of Swears & Wells at 15/-. I produce a circular letter, EXHIBIT 110.

On 31st July clients were advised by telegram to sell Swears & Wells at 21/- and to reinvest in Rhodesia Border Mining Corporation Ltd., at 10/-.

The Company sold 60,729 Guy Motor shares at 15/- for 162.13.9. of which they repurchased 114,347 shares from clients for £118,767.15.6. a profit for clients of £24,605.1.9.

In September, 1930, clients were advised to buy shares in Triplex Safety Glass at 25/- and a little later to sell out at 35/- and invest the proceeds in Rhodesia Border Mining Corporation Ltd.

The Company sold 62,778 Triplex shares at 25/- for £80,-709.16.6. and repurchased 58,328 shares at 35/- for £100,-774.9.10, shewing a profit to clients and loss to the Company of £20,064.13.4. the bulk of which was reinvested in Rhodesia Border Mining Corporation shares.

The Company sold 805,305 Rhodesia shares for £478,-817.10.6. but they also delivered 251,095 Rhodesia shares for £144,973 to clients who had instructed them to purchase Vulcans. I produce EXHIBIT 111 a sample of the correspondence passing between the Company and clients in such cases.

The total sales of Rhodesia shares was then 1,056,400 shares for £623,790.10.6.

The only payment for the Rhodesia shares in the books of the Company is £33,000 on 29th August, 1930, cheque produced EXHIBIT 112.

The profit shewn in £590,790.10.6.

In my evidence of the 2nd January I stated that the profit to the Company on the sale of Vulcans was about £600,000.

That figure should be £456,988.11.0. The explanation
191 being that the first figure was the profit on the sale of 1,237,013 shares, but this has to be reduced by £144,973, the value of shares sold as Vulcans but in respect of which clients received Rhodesia shares.

The total profit made by the Company by the sale of Asbestos, Rhodesia and Vulcan shares was £1,287,950, less £129,035 the losses incurred in the Edison Bell, Guy Motors, Swears & Wells, and Triplex Glass transactions, making a net profit of £1,158,915.

As to H. Wise:

The cash books shew payments to H. Wise, from 13th June 1930 to 27th October, 1930, inclusive, amounting in all to £709,180.

I produce the cheques on the Midland Bank, EXHIBIT 113, and the cheques on Barclays Bank, EXHIBIT 114 for those payments. I produce EXHIBIT 115 a Schedule of those payments.

As to J. Wise:

The cash book Exhibit 63 shews a receipt on 2nd October, 1928, of £5,000 "Loan, J. Wise."

That book and the cash book Exhibit 71 also shew the payments in 1930, to J. Wise:

9th April	£ 250.)	
22nd May	1,700.)	
26th June	106.1.9.)	Total £2,341.1.9.
and 10th Sept.	285.)	

30th Jan. 1931. *Recalled:*

I produce the cheque for £245 dated 23 April, 1930, Ex. 117.

I also produce the cheque for £2,353.15.8 dated 24th April 1930, EXHIBIT 118.

192 In addition to the £14,000 mentioned in Ex. 86 I produce a cheque for £575—dated 20 May, 1930, drawn on the

Broad Street Press account at the Midland Bank Ex. 119 to S. Green.

I produce the cheque for £6000 dated 15th October, 1930, signed pp. H. Wise, Arthur J. Klein EXHIBIT 120.

I also produce the three cheques amounting to £1720 shewn in the cash book EXHIBIT 63:—EXHIBIT 121 for £500, EXHIBIT 122 for £500, EXHIBIT 123 for £720.

I produce also the cheque for £285 dated 10th September, 1930, drawn on the account of Broad Street Press to cash EXHIBIT 124.

Further as to Broad Street Press Ltd.:

From the File of the Company I find that a large number of persons were employed by the Company for the purpose of selling shares—about 20 persons in all. There is no record in the Company's books of any payment to those persons.

In the correspondence is a frequent reference to calls by these various persons on clients or prospective clients.

Towards the end of August, 1930, clients were beginning to make claims for rescission of contracts on the ground of fraudulent misrepresentation.

I produce some of the correspondence EXHIBIT 125 and I refer to letters—in the cases of Miss Cheetham, Mr. Nilmo, Sir H. French, Miss Napier, Mr. Hartley, Mr. McArthur, Joseph Smith and George Hope.

The last payment to employees in the wages book is dated 24th October, 1930.

The minute book Exhibit 64 shews that on 27th October 1930 a meeting was held at which the voluntary liquidation of the Company was considered. It shews that A. J. S. Osborn and A. Paris, Directors, and Messrs Reid Sharman & Co. Solicitors and Mr. I. Levy, Accountant, were present.

The balance at the Bank at the close of the day before that date is shewn by the pass book to have been £6,642.17.5.

On 27th October a cheque for £6000 was drawn, with other cheques—to H. Wise. It is one of the cheques in Ex-
193 HIBIT 114. After certain other sums were drawn out a balance of £508.9.1 remained—which was collected by the Official Receiver.

On 27th October it was resolved that a Meeting of Shareholders be convened for the purpose of going into voluntary liquidation.

The Minute book shews a meeting of shareholders held on

28th October at which A. S. J. Osborn, A. Paris and J. H. Osborn were present as shareholders. No one else is stated to have been present.

A resolution "that the Co. be wound up voluntarily" was passed and "that Mr Isaac Levy be appointed Liquidator."

The Minute book shews another meeting on 29th October—a meeting of creditors, present A. S. Osborn, I. Levy and Mr Tredgold, Solicitor, advising Levy. The Minute records that no creditors appeared etc.

My investigations shew that there were in fact creditors of the Company at that time—but not many.

The Petition was presented on 27th October 1930 by Miss Oerun.

My investigation shews that prior to March 1920 there were no books kept shewing the purchase and sale of shares.

In the cash book Ex. 72, on 7 July 1930 is a receipt of £25,000 and £15,000. Produced is a cheque for £15,000 drawn by H. Wise on 7th July 1930 on the N. of Scotland Bank to cash and cleared through the Midland Bank, Grays Inn Branch, the Company's Banking account EXHIBIT 126.

I find that the Company were selling shares in Vulcan Copper Mines and Rhodesia Border Mining Corporation Ltd. as principals.

As regards Vulcan Copper Mines Ltd. the Contract Ex. 58 refers to mining rights in Southern Rhodesia and S. W. Africa. Those two districts are about 1000 miles apart as the crow flies with the Kalahari desert between them.

As to Throgmorton Press Ltd.:

I have also acted as Examiner in respect of the Throgmorton Press Ltd.

I produce the Company's cash book Ex. 94. It shews the payment of £6000 on 15th October 1930 into the Company's account at the National Provincial Bank, Finsbury Circus. The pass book is Ex. 95. On the same day is a payment out of £4785 for a banker's draft. That £6000 was received from A. J. Klein.

The Company was registered with a nominal capital of £10,000 in £1 shares. Four shares have been allotted. Two to the signatories to the memorandum and one each to the two Directors: Cyril Alfd Hannan Harris and Geo. Edwd. Reginald Wheal. The signatories to the Memorandum were

clerks in the employment of Messrs. Reid Sharman & Co. Solicitors.

The paid up capital at the date of the winding up Order was £2—which was paid by the two directors on 29th November, the date on which the Petition for compulsory winding up was made.

The Winding up Order was made on 15th December.

I produce the Minute book of Throgmorton Press Ltd. Exhibit 127. It shews that a meeting of Directors took place on 14th October 1930 at the then registered office in the office of Reid Sharman & Co. at 35 Bedford Row. It re-
194 cords that a draft of the Contract for the purchase by Throgmorton Press Ltd. of the newspaper "Finance" and other assets from Broad Street Press Ltd. was produced.

When the Provisional order for the winding up of Broad Street Press Ltd. was made I found that some furniture and practically all the correspondence files of that Company were missing.

On 11th November I attended the offices of Throgmorton Press Ltd. and found a number of filing cabinets containing correspondence between Broad Street Press and clients; and some furniture which was afterwards identified by a boy named Shortlands.

Throgmorton Press Ltd. was formed to publish a newspaper and published a 6d weekly paper called "Financial Observer." I produce three copies of that paper of 29th October, 5th and 12th November, Exhibit 128. It had the same "make-up" as "Finance" the paper of the Broad Street Press.

I did not find the original cheque book of the Company—The Throgmorton Press Ltd.

The cash book does not shew any receipts from sales of newspapers.

From the Statement of Affairs which was filed by Mr. Harris, Director, on 22nd January 1931, I find that assets estimated to produce £2,315.11.7, liabilities to eight unsecured creditors £416.15.4, shewing a surplus of £1,874.16.3 over creditors to meet the claims of shareholders.

Other liabilities amounting to £6030.4.6 are shewn as not expected to rank—including £6000 claimed by Broad Street Press Ltd.

195 The offices of Throgmorton Press Ltd. were at Ludgate House, 110-111 Fleet Street.

Cross-Examined for J. Wise:

Referring to Ex. 63 and the entry of 2nd October 1908—"Loan, J. Wise £5000"—there is no other evidence that J. Wise lent £5000 to Broad Street Press.

I only know what is on the entry in the cash book.

Looking at Ex. 124 there is no indication on that cheque that J. Wise received that cheque or the proceeds of it. The cheque is payable to cash and is unendorsed. It has the crossing stamp of Barclay's Bank, Knightsbridge.

Cross-Examined for Spellen:

I believe the persons whose correspondence is in Ex. 125 are alive. I do not know for certain. I do not know them and I do not know their handwriting. They can be called to produce their correspondence.

Recalled next page.

12 Feb. 1931. *Recalled*:

I now produce a cheque for £1700 dated 22nd May drawn by Broad Street Press Ltd. to J. Wise and endorsed "J.
196 Wise," EXHIBIT 142, and a cheque for £250 of 9th April also drawn by Broad Street Press Ltd. in favor of J. Wise and endorsed "J. Wise," EXHIBIT 143.

Those are two of the cheques referred to at the end of my evidence given on the 16th January 1931.

CYRIL THOMAS NEWMAN.

30 Jan. 1931. JOSEPH WALLIS HILL on Oath saith:

I am an Examiner in the Department of the Official Receiver in Companies Liquidation. I have had the conduct of the winding up of Rhodesia Border Mining Corporation Ltd.

The Petition was presented on 8th November 1930.

The Official Receiver was appointed Provisional Liquidator on 10th November.

The Winding up Order was made on 24th November.

The Directors were Alexander Fraser and Sidney Aston Redrup, both of Buluwayo, and Jesse Hill and Harry Brignell of London.

Hill and Brignell were the only Directors who held the required qualification shares of 100 each.

197 They did not pay for the shares themselves. I cannot say definitely who did pay.

I produce a copy of the Memorandum and Articles of Association EXHIBIT 131.

Article 47 provides that the management of the business shall be vested in the Directors.

My investigation shews that the business of the Company was not managed by the four directors.

The Articles No. 37 provide remuneration of £200 a year to the Chairman and £300 a year to be divided between the other directors.

My investigations shew that Hill received £50 as Chairman for one quarter and Brignell £25 for one quarter.

I produce an Agreement between the Pretoria Mining Estates Co. Ltd. and the Rhodesia Border Mining Corporation Ltd. dated 6th August 1930 EXHIBIT 132 reciting that the Pretoria Company as Vendors are possessed of or otherwise well and sufficiently entitled to certain copper bearing properties and the Lomagundi District copper areas in Southern Rhodesia and referring to three properties, one in South West Africa and the other two in Southern Rhodesia. Between Southern Rhodesia and South West Africa is the Kalahari Desert and about 1000 miles.

The Agreement provides for the purchase by the Rhodesia Company from the Pretoria Company scheduled proper-

198 ties being all mining and other rights in certain developed mineralised blocks of copper claims.

The consideration was £600,000 payable £12,000 in cash and the balance at the option of the Company either in cash or by allotment of 1,176,000 Rhodesia shares of 10/- each credited as fully paid up.

The £12,000 cash was not paid but the 1,176,000 shares were allotted.

The date of completion was to be 31st October 1930, and the Agreement is signed for the Pretoria Company by Ira C. Ozanne, Director. It does not bear the Company's seal.

It is also signed by Jesse Hill for the Rhodesia Company over a 6d. stamp.

I produce the Minute Book of the Rhodesia Company EXHIBIT 133. Under date 6th August 1930 is a Minute recording the signing of that Agreement at 80A Coleman Street and

shewing as present: J. Hill, H. Brignell, Director and J. C. Benoy, Secretary.

Apart from that Agreement I have found no documents of any kind as to the existence of those properties in Africa or shewing that such properties were owned by the Company.

I can find no record of completion having taken place on 31st October as provided in the Agreement.

On 27th October the Pretoria Company applied for an extension of time for a further two months, by letter produced signed Ira C. Ozanne EXHIBIT 134 and that was agreed to by this letter of the 30th October Copy produced, EXHIBIT 135.

On 25th August the Pretoria Coy. wrote the Rhodesia Press this letter EXHIBIT 136 nominating Broad Street Press to receive 1,176,000 Vendors Shares at 10/- each.

I produce EXHIBIT 137 a copy of a letter from the Rhodesia Co. to Broad Street Press dated 15th August 1930 as to the grant of an option on 257,000 further shares of 10/- each at par.

With the purchase of 66,000 shares, the allotment of 1,176,000 shares and the option on 257,000 shares, Broad Street Press had all the shares of the Rhodesia Coy. with the exception of 200 that went to the Directors and 800 shares that went elsewhere.

On 29th August 1930 Broad Street Press applied for 66,000 shares at par, application produced EXHIBIT 138 signed A. S. J. Osborn.

A cheque for £33,000 was paid into the Co's banking account on 15th September 1930. I produce the Company's Paying in book EXHIBIT 139.

I find that the Pretoria Coy. sold the whole of the Vendors shares to H. Wise, 2 Broad Street Buildings, for the gross sum of £33,000 as in contract note Ex. 51.

On 21st August 1930 the Pretoria Co. wrote the letter Ex. 52 to T. W. Webb & Co. Ltd. instructing them to deduct £4000 and to sign a commission letter to Elman and pay him that sum and on the same day I find that T. W. Webb & Co. undertook to pay Elman £4000 as in the copy letter Ex. 54 and Ex. 55 is Elman's receipt for that sum. On the same day T. W. Webb & Co. wrote to H. Wise the letter Ex. 53 undertaking to deliver the shares.

I produce correspondence to the Rhodesia Co. from Broad Street Press between 2nd September and 31st October 1930 giving lists of nominees EXHIBIT 140.

The Statement of Affairs of the Rhodesia Coy. was lodged with the Official Receiver on 6th January 1931 by Jesse Hill and Harry Brignell. It shews Certificates for 1,049,281 200 shares issued, all except 200 shares to the London directors were issued through Broad Street Press.

It shews cash at Bankers £29,413.18.4 and other property including interest in mines in Rhodesia and South West Africa purchase price per contract £600,000 estimated to produce £6000 and total assets £35,413.18.4. Total liabilities £7,141.6.3, including seven unsecured creditors for £1,123.17.6 and other liabilities £6000 being the reduced balance of cash consideration payable to vendors of property in Rhodesia and South West Africa. There is shewn as due to Preferential Creditors £17.8.9. The estimated surplus for shareholders is shewn as £28,272.12.1 to meet liability to shareholders of £621,100 shewing a deficiency of £592,827.7.11.

These is a note as to the explanation of the Directors as to the reduced value of assets other than cash, at £6000 *i. e.* as to interests in properties, in South West Africa and Southern Rhodesia. They say "Though we believe these properties have a potential value far in excess of this figure we are unable to state what they are estimated to produce and merely quote this sum which it is understood the Vendors will accept, as balance of purchase consideration."

W. J. Wallis Hill.

201 12 Feb. 1931. Albert Simon Joseph Osborne on his Oath saith:—

I live at 33B Clanricard Gardens, W. 2.

Shortly before September 1928 I was a Clerk in the employment of Newman Williams & Co. outside brokers of 42 Copthall Avenue.

While I was so employed I was introduced to the man whose photograph is Exhibit 20. I knew him as Walker.

I was introduced to him in Copthall Avenue. I cannot remember by whom. Shortly after the introduction I met him again and saw him from time to time at the office of Newman Williams & Co. I don't know what he called there for.

He asked me if I would like to become a director of a Com-

pany. He did not at the time name the Company. He said he was going to bring out a high class financial newspaper.

I knew nothing about the running of a newspaper.

I cannot remember telling Walker that but I think I must have done.

He did not at that time tell me who the other directors would be.

He said my chief job would be to see to the money, to safeguard the money. He said there would be a fair amount of money at the bank.

He did not then mention who the Editor would be.

This would be some time shortly before September 1928.

I saw him 2 or 3 times in all before a meeting at Elman's Office.

I arranged with Walker that I should be a director of the Company and I was to receive £100 a year.

I did not then know Walker's address or anything about him.

At one of the interviews Walker told me the brother in law of the Solicitor to the Company would be one of the directors.

About 12th September I attended a meeting at Elman's Office at 27, Lincoln's Inn Fields. Mr. Paris, Mr. Elman, Mr. Osborne, the Secretary, were present. I think Mr. Moncrieff was there.

Klein was not present.

Mr. Walker explained that he was going to start a paper and that Mr. Paris and I were to be the 2 directors,
202 that I was to receive £100 a year, and Mr. Paris the same, and I believe it was then that Walker said I was to be the Editor of the paper. The name of the Company was to be Broad Street Press Ltd.

I was allotted 1,998 shares at that meeting.

I had not applied for those shares.

I paid no money for those shares.

I don't know if any money was ever paid for them.

I don't think I ever inquired.

5,000 shares were allotted at that meeting altogether.

I continued in the employment of Newman Williams & Co. as a Clerk.

At lunch time I used to go to the office of J. Wise at Broad Street Place and I used to wait for Mr. Moncrieff who would bring cheques for endorsement and sometimes

cheque books to be signed up in blank by me, having already been signed by Paris.

I was the Editor of Broad Street Press. In fact I had nothing whatever to do with the running of the paper. I never wrote any articles for it. I did not know who was the real Editor of the paper. The name of the paper was "The City News."

I would sometimes see Mr. Walker when I called at J. Wise's Office at Broad Street Place, also sometimes Mr. Spellen. I think I saw the accused J. Wise there once or twice.

Moncrieff paid me my director's salary weekly.

Before the last 5 or 6 months of the existence of the Company, my work for the Company took about 5 minutes a
203 day. Sometimes there would be piles of cheques for signature, but usually it took 5 minutes or so a day.

I knew nothing of the working or management or business of the Company. I took no part in it.

My salary was increased to £4 a week, and later to £6 a week.

I saw the paper weekly at first, but later I did not get it unless I asked for it, and then I had to wait so long that I often bought one.

Later the title of the paper was changed to "Finance," the Editor then being Norman D. Spencer. I was not consulted about the change of name or the change of Editor. I never discovered who Norman D. Spencer was.

I used to ask Moncrieff now and again how the Company was prospering.

It came to my knowledge that the Company were buying and selling shares.

During 1930 instead of going to see Moncrieff daily I used to go and see Walker at an office in Copthall Avenue daily at lunch time. Walker told me to ask for him there in the name of Guest.

I signed and endorsed cheques again there.

Usually the cheques had been for small amounts, 5/-, 15/- or 30/-. One day in the spring of 1930 I noticed the cheques were for larger amounts.

I said to Walker then: "Do you deal in shares?"

He said, "Yes," and said they'd made a lot of money for clients, subscribers of the paper, and he said, "I'll show you today's mail."

He brought in a number of letters and I read some of them,

thanking the Company, for money made by the Company for clients.

The cheques were for hundreds and thousands of pounds.

At Walker's office in Copthall Avenue I think I saw the accused Spellen once or twice.

That course of business went on through the summer of 1930.

I know 15 Copthall Avenue.

I went there about the end of October 1930 on a telephone message. I saw the shorter of the two Greens there—

204 B. Green. He met me and took me there. I saw the accused Newbery in the office doorway. I did not speak to him.

In the room I saw another man, in an inner office, an elderly man. He handed me some lists, with share numbers, allotment sheets, and asked me to initial the allotment sheets.

The allotment sheets are produced to me, EXHIBIT 144, all initialled by me.

They are dated various dates from July 2nd onwards. I had not seen them before October. I put the dates on them in consequence of something I was told.

The allotment sheets are all in respect of Vulcan Copper Mines.

I initialled those sheets at that office in October.

On that occasion I also saw these letters in Exhibit 56 relating to Vulcan Copper Mines also dated various dates from July to October 1930.

I signed those letters over the stamps. They were already complete, except for signature. They are all on Broad Street Press notepaper.

At that time—October 1930—I cannot say if Broad Street Press still had offices.

205 Other lists were looked for that meeting, but they weren't there, and the elderly man asked me to go back the next day. I forgot about it and did not go.

About a week later I went to the office in 15 Copthall Avenue again—alone. I saw a clerk. The name on the office was African "something or other" Corporation. I went there because of forgetting to go the day after the meeting. No allotment sheets were there and I did nothing.

On or about the day I signed the allotment sheets I went to another office at Broad Street House, and there I signed some letters on Broad Street Press paper. That was at

Green's request—B. Green. I left the letters there, relating to shares in either Rhodesia Border Mining Corporation Ltd. or Asbestos Holdings Trust Ltd.

At 15 Copthall Avenue I also signed some letters relating to another Company, either Rhodesia or Asbestos.

Some of the letters in Exhibit 140 are letters I signed at 15 Copthall Avenue and relate to Rhodesia Border Mining Corporation.

In the course of my duties I met Klein. Exhibit 16 is his photograph.

I first saw him in the Autumn of 1928, and saw him after that casually in the street and once or twice in the offices of Broad Street Press and 2 or 3 times at 42 Copthall Avenue. I never received any instructions from him in regard to Broad Street Press.

I saw Spellen from time to time at the offices of Broad Street Press sitting at a desk or coming out of a room.

I believe I have seen J. Wise at the office of the Company, once or twice.

The first time I saw Elman was at the meeting at his office on October 12th. I saw him at most of the meetings of the Company after that. I never saw him at the offices of the Company.

Looking at Exhibit 65, bill of costs as to certain actions, one *A. S. J. Osborne* v. *Truth Publication Co. Ltd.*

I knew nothing at all about that action. I did not know that action was being taken in my name against the Truth Publication Co. Ltd. I was not consulted in any way.

206 I knew nothing about any of the other actions referred to in Exhibit 65. I was not consulted as to any of them.

This is the original minute book of Broad Street Press Limited. Exhibit 64. The minutes are signed by me.

The minutes of 14th May 1930 records the appointment of Reid Sharman & Co. as Solicitors to act for the Company in consultation with Mr. Elman. I was never given any reason for that.

I was never asked to give my views on any matters of the Company.

The minute of 13th October 1930 refers to the sale of the Company to Throgmorton Press Ltd. I saw the draft agreement for the sale. I was not consulted as to the sale of the business. I don't think I signed that minute on the day of the

meeting, but I think I signed it at the next meeting. I sealed the agreement.

Later on I saw Mr. Levy at 27 Chancery Lane and at a meeting of the Company on 27th October 1930 it was resolved to go into voluntary liquidation. Elman is not recorded in the minute as being present.

I attended a meeting at Winchester House on 29th October.

Klein never attended any of the meetings of the Company.

The minutes in Exhibit 65 do not fully state all the persons present at the meetings. Walker was sometimes present, but his name is not in the minutes.

207 When my salary was raised Mr. Walker said he would give me a rise and he did so. I did not perform any more onerous duties. He was a generous man

I did not pry into the affairs of the Company.

In the cover of Exhibit 97 "The Stock Exchange, its methods & Praetice," is a compliment slip bearing my name as Editor. I had nothing to do with compiling that book and I did not know that slip was being used in that book. I first saw it sometime last year and I got them to give me a copy.

I did not know that Broad Street Press Ltd. were employing canvassers to go round selling shares.

I knew nothing at all about the Vulcan, Rhodesia or Asbestos Companies.

It did come to my knowledge that the Company were selling large numbers of shares in those Companies.

I carried out my director's duties in the clerk's office. I heard of the sales of those shares in the Clerk's office.

The circular Exhibit 102 as to Asbestos shares purports to bear my stamped signature. I did not know that such circulars were being disseminated. I did not know anything of the circular letters Exhibits 108 and 110 or of Exhibits 103 and 104. I knew nothing of any circular letters being sent out.

After the meeting at which Mr. Levy was present, I went to 2 Broad Street Buildings but on what I was told I did not go to my usual room.

I knew nothing about the assets of the Company.

In connection with the winding up of the Company I acknowledged receipt of the duplicate forms for prepara-
208 tion of the statement of affairs and I signed an application for leave to incur expense.

In the file Exhibit 102 I am described as a journalist. I have never been a journalist. I never authorized that description of myself.

The meetings of the Company were generally held at Elman's office. I cannot recall anybody other than Walker as being present and not recorded on the minutes.

ALBERT SIMON JOSEPH OSBORNE.

12 Feb. 1931. ALBERT PARIS on his Oath saith:—

I live at 76 Homeleigh Road, Stamford Hill.

I am the brother-in-law of the accused Elman.

I became a director of Broad Street Press Ltd.

During the summer of 1928 I was introduced to a Mr. Walker, I saw him 3 times before I became a director.
209 The third time he told me he was forming a Company to run a newspaper and he wanted me to be a nominee—a director; and I agreed.

He said I would get £100 a year. I was then employed by Sparklets Ltd. as a traveller.

I was introduced to Walker in the lounge of the Regent Palace Hotel.

I did not ask Walker why he was choosing me as a director. I had only seen him twice before.

He told me I would not control the Company—but only sign cheques and attend meetings.

He told me it was a usual thing to have nominees as directors. He said he was going to run the Company.

I knew I was to have a co-director.

I attended a meeting at Elman's office—at which I was allotted 3,000 shares in the Company—Broad Street Press Ltd. I did not pay for those shares. I had not applied for them. I knew nothing about them.

I carried out the duties of director as outlined by Walker. I signed blank cheques. The cheque books were sent to my home and sometimes sent on to me when I was travelling in the provinces.

I did nothing beyond signing blank cheques and attending meetings.

I never went to the offices of Broad Stret Press Ltd. because I was never asked to go.

Having signed the blank cheques I would send them back to the Company's address at Broad Street Buildings.

I received my salary—it was sent on to me each week.

I knew nothing at all about Companies.

I never made any inquiry about the Company or its business and was never told anything about it.

210 I attended meeting of the Company at the offices of Elman at Lincoln's Inn Fields.

I have seen before a book like Exhibit 64 which the Secretary Mr. Osborne—had. I never looked at it.

Beyond those persons stated in the minutes as attending the meeting—Mr. Walker attended most of the meetings. His name is not recorded.

There was no talking at all at the meetings, except when Walker was there. When he was there Walker did the talking. When he was not there we simply passed the resolutions on the agenda which had been communicated to us by Broad Street Press Ltd.

Generally Mr. Osborn (director) Mr. Osborne (Secretary) Walker & Elman and I were present at the meetings.

If Walker wasn't there that left the 2 Osborns, Elman and I. There was no talking about the business of the Company.

The Secretary was a clerk employed by Elman.

I never met any other persons than those I have mentioned in connection with the Company.

The paper published by the Company was sent to me every week. When it was the "City News" I noticed the Editor was stated to be A. S. J. Osborne. I thought he *was* the Editor. I never inquired.

Court.

He was my co-director. We only met at the meetings.

I understand he was the Editor.

Further Examined:

I saw the book "Stock Exchange, its Methods & Practice." I noticed that A. S. J. Osborn was stated to be the editor of it. I never inquired about it.

I never saw the Company's bank pass book.

I never saw any books of the Company except the minute book.

I knew the business of the Company was the publishing of a financial newspaper.

211 I did not know the Company was selling shares until the end of last year when the writs were coming in—about October 1930. Then I realised there were actions as to share transactions. I went to see Reid Sharman & Co. and sent the writs on to them. I was served with some of the writs.

I was surprised to receive the writs.

I mentioned it to Elman; at his flat. I told him I was taking them to Reid Sharman and the matter was left there. I understood that at that time Reid Sharman & Co. were solicitors to the Company—and not Elman.

I look at the minute of 14th May 1930. It is clear from that that Reid Sharman & Co. were appointed to act in consultations with Elman. I was present at that meeting.

I cannot recollect whether Elman was present at the meeting of 27th October 1930.

I did not know that Broad Street Press Ltd. were selling shares in the Asbestos, Rhodesia or Vulcan Companies.

I never authorised any payments to Elman in respect of any matters relating to the Company.

All the cheques I signed were in blank—when I signed them.

I never knew that Elman was defending actions which had been brought against the Company: I never authorised that.

212 I knew about the libel Action against "Truth." I did not authorise it and I was not consulted about it.

ALBERT PARIS.

213 12 Feby. 1931. ALFRED PERCY SPRANGE, on his Oath saith:—

I live at 122, Lyttelton Road, Golders Green.

I am not now in employment.

In July 1930 I was temporarily employed by the African Construction Corporation Limited, 15, Copthall Avenue. They had no office and I had a seat in a room of T. W. Webb & Co. Ltd. at 5, Moorgate Buildings.

Mr. Brett and Mr. Smith (Secretary) were connected with T. W. Webb & Co.

Mr. Sterling was connected with the African Construction Company.

I saw the accused Newberry daily at 15, Copthall Avenue.

At 5, Moorgate Buildings I saw him about five times only.

I became a director of Vulcan Copper Mines Ltd. Newbery asked me to be a director. My co-director in England was a Mr. Bonnard. My remuneration was £100 a year, which was paid by the Company. I took some part in the business of the Company the only part of the Company's business that was operating was the drawing and issue of certificates. I took part in that.

Exhibit 58 an agreement with Permanent Investments Ltd. bears my signature. I was called to 15, Copthall Avenue on 27th June to sign it, by either Mr. Brignell or Mr. Sterling. I saw there Mr. Bonnard and I think Mr. Brignell and Mr. Sterling were both there. Mr. Ozanne was not there. I am not sure if Newberry was there.

15, Copthall Avenue were Newbery's offices.

I knew nothing about the properties mentioned in Exhibit 58.

The first thing I knew about the matter was when I was asked to sign the agreement.

The consideration was £12,000 cash and some shares.

The Company had not got £12,000 at that date. The Company's banking account had not then actually been opened.

In due course the names of the allottees were supplied by Broad Street Press Ltd. I took part in alloting the 214 shares, from about 3rd July 1930. We had on 30th June. received application for 66,000 shares from Broad Street Press Ltd. and £33,000 by their cheque.

Exhibit 144 are the allotment sheets.

Allotments continued down to sometime in October, about the 20th.

Application was never made to the Stock Exchange for permission to deal in the Company's shares.

The Company never conducted any business that I am aware of.

I took no part in the preparation of the circular letter, Exhibit 104, as to Vulcan Copper Mines. I never authorised it. As far as I know no particulars were ever furnished by Vulcan Copper Mines Ltd. to Broad Street Press Ltd.

I know Mr. S. Brignell. He is employed at 15, Copthall

Avenue. I don't know by whom. I should say the real person at 15, Copthall Avenue is Mr. Newbery.

In September 1930 I took part in the preparation of allotment sheets for the Rhodesia Border Mining Corporation Ltd. at the request of, I believe, Mr. S. Brignell.

Produced, EXHIBIT 145, are the allotment sheets.

I had no connection at all with the Rhodesia Company. I knew nothing at all about that Company.

I was not paid anything additional for that. I took instructions from S. Brignell. He worked at Throgmorton House, 15, Copthall Avenue. I was at 5, Moorgate Buildings.

I prepared those allotment sheets from the Counterfoils of the Certificates, because the original lists had been cut about owing to Broad Street Press having sent in so many alterations.

I wrote a great many of the Rhodesia Certificates and sealed them. They had then already been signed by the directors.

I think Mr. Hill was present at the sealing, but not often.

215 I entered up part of the share ledger—from A-E—upon Mr. Brignell's instructions.

I got the money for the stamp duty by cheque drawn on Permanent Investments Ltd. by Newbery. I cashed the cheque and bought the stamps. The cheques were for between £100 and £200.

I have been to 25, Victoria Street, the registered office of Vulcan Copper Mines and to Throgmorton House, 15 Copthall Avenue where the Company's business was transacted. No business was transacted at 25, Victoria Street.

I wrote up part of the share ledger of Vulcan Copper Mines, from L to Z. Mr. Leme wrote up the rest. He is employed at 15, Copthall Avenue. I wrote up my part at 5, Moorgate Buildings from the nomination lists handed to me by Mr. Brignell. The lists did not differentiate between cash shares and vendors shares and there is no distinction shewn in the two ledgers.

Produced, EXHIBIT 146, is the journal of the Vulcan Company. It shews the allocation of shares. I entered those particulars early in November from information supplied to me either by Mr. Sterling or by Mr, Norris.

Mr. Norris is a Chartered Accountant and auditor for several companies round about 15, Copthall Avenue.

I have known Newbery about 30 years. I was first em-

ployed by him in 1899 or 1900, and until 1916, and then again in 1929 until about three weeks ago.

My qualification as director of the Vulcan Company was 100 shares, value £50. They were allotted to me on 30th May by Permanent Investments Ltd. the Vendors.

I saw a draft of the agreement, Exhibit 58, before 27th June. I don't know whether Sterling or Brignell shewed it to me, and one of them asked me to sign the fair copy.

Referring to the minute of 19th June 1930 in the Minute Book, Exhibit 56, no such Meeting as there referred to was ever held.

In Exhibit 56 is a minute of a meeting on 27th June 1930 at 25, Victoria Street. No meeting took place at that address.

But a meeting took place at 15, Copthall Avenue, at 216 which Bonnard and I and Sidney Brignell were present.

I am not certain if Mr. Sterling was there. That is a minute of what took place at that meeting. The minutes in the minute book are in two handwritings. I think Mr. S. Brignell wrote some of it, and the Secretary, Mr. Smith, wrote the rest.

The minutes were not written up at the time of the meeting. Records were kept at the time, but the minute book was all written sometime early in November.

Neither of the meetings mentioned in the document on the file Exhibit 47 headed "Special Resolutions, Vulcan Copper Mines Ltd." were ever held at 80, Coleman Street. But informal meetings took place at 15, Copthall Avenue upon the dates mentioned.

I signed that document at the request of, I believe, Mr. Brignell.

Mr. Newbery told me it was necessary to increase the Company's capital in order to take over additional mines.

As director of the Vulcan Company I have never come across any document shewing title to any properties, in Rhodesia or S. W. Africa. I asked Mr. Newbery about it and he fixed a day when he would shew me plans and reports at a round table Conference. That was in September or Oc-
217 tober or later. That was after some of the shares had been issued. Up to then we knew nothing except what was stated in the agreement. I did not know that the specified properties were 1,000 miles apart. The round table conference was never held.

Cross-examined for Newbery:

Newbery never put documents of title on the table or shewed any to me.

On 27th June .Vulcan Copper Mines had no money at the bank.

The agreement provides for completion on 15th August 1930. At that date the Company had round about £28,000 at the bank, so that there was plenty of money to complete.

Completion was postponed because there was a question of amalgamation with some other companies.

That £28,000 was not added to afterwards, but that sum remained to the credit of the Company at the bank until the Official Receiver took it over.

In some cases Brignell gave me cheques for the stamps, and on two occasions Newbery did so.

At Victoria Street the Company had only a staff of two, quite insufficient to deal with these transfers, which were therefore dealt with at 15, Copthall Avenue.

Mr. Brignell paid me my salary.

I never heard that I was employed by the Messanine Syndicate. I was paid sometimes by cheque and sometimes by cash.

The cheques were those of the African Construction Corporation, not of the Mezzanine Syndicate.

Re-examined:

The £28,000 was part of £33,000 paid by Broad Street Press.

ALFRED PERCY SPRANGE.

218 18th February 1931. ALFRED HENRY BONNARD on oath saith:

I live at 73, Inverness Terrace, W. 2.

I am a Commission Agent in mining properties.

I know the accused Newbery for the past 20 years at least. His offices are at 15, Copthall Avenue, where he carries on the business of promoting companies, mainly in mining.

I have seen names of companies on his office door, such as The Suvaroff, the African Construction Co., and the Nile Valley, General Mining and Finance.

I have not seen Newbery's name on the door.

In March 1930, I had a conversation with Newbery about some property in Rhodesia and another property in the Lomogundi district as to which I had also spoken to him previously. He told me he had been engaged in negotiating the purchase of the Rhodesia property for some time and that he wanted me to be a director of a Company to carry on an enterprise in connection with the two properties, to be called the Vulcan Copper Co. and I became eventually a director of the Vulcan Copper Mines Co. Ltd. I agreed to become a director somewhere about March 1930.

I was shewn copies of documents about the properties by Newbery, especially relating to the Rhodesia property. I had knowledge as to the S. W. Africa property.

My renumeration as director was £150 a year at first.

I knew that Mr. Sprange would be my co-director. I had recently met him, but very rarely.

I attended Board Meetings of the Company.

My director's qualification was 100 shares, which were allotted to me. I don't know who paid for them. I did not.

The board meetings were held mainly at 15, Copthall Avenue. No board meetings were held at the registered of-
219 fices, 25, Victoria Street. It was more convenient to hold the meetings at 15, Copthall Avenue for purposes of allotment.

EXHIBIT 56 is the minute book of the Company. The meetings are all recorded as taking place at 25, Victoria Street. Twenty or more of the minutes are signed by me. I did not sign those minutes on the dates when they purport to be signed. I signed them in November, on two or three dates in November, I think.

Mr. Sprange or Mr. Brignell brought the minutes to me for signature. I think it was Mr. Sidney Brignell.

The minute book, Exhibit 56, was not in existence at the date when meetings were held prior to November, as far as my memory goes. The minute book came into existence in November. It was compiled from the sheets of paper which are now in the minute book, Exhibit 56. I did not sign all of those sheets of paper at the time of the meetings, they were signed, most of them, when the minute book was prepared—in November.

Some of the minutes were prepared by Mr. Brignell, some by Mr. Sprange and some by the Secretary, Mr. Smith. I had very little to do with the clerical work.

I would be summoned to meetings by telephone, by Mr. Brignell or a Clerk in the office at 15, Copthall Avenue, Mr. S. Brignell was not an officer of the Company.

Mr. S. Brignell, Mr. Sprange and I would be present at the meetings.

The capital of the Company was £200,000 in 10/- shares—later increased to £600,000 in 10/- shares in July 1930, as shown in the file. Exhibit 47. I did not know the capital of the Company was being increased. I did not know that it had been increased until the new shares were being issued.

I cannot say who told me of the increase of the Capital of the Company, it may have been by Brignell, Newbery or Sprange. I had not been consulted.

By Court:

I did not receive a summons to attend the meeting at which the capital was increased.

I did not express surprise when I was told of it.

I left the clerical work of the Company to the others.

Further Examined:

The only minute of the Company bearing on it is under date 3rd July, 1930. There is no record in the minute
220 book of any resolution of the Company for the increase of capital.

By Court:

I have been director of other companies, but not many. I did not pay much attention to the work being done at 15, Copthall Avenue. I had perfect confidence in what they did.

Further Examined:

I think I was shewn a draft agreement between Permanent Investment Ltd. and the Vulcan Company. I believe by Newbery or S. Brignell.

I took no part in those negotiations.

I thought very highly of the property and that the purchase price was very reasonable. I think very highly of the property now. I mean of the Rhodesia property and the Lomagundi property in S. W. Africa.

I never saw any document shewing actual title to the

properties while I was a director of Vulcan Copper Mines Ltd.

I signed the Statement of Affairs of the Company in which the property is valued at £6,000, with an explanation appended to the Statement.

221 The Company had 6 months previously agreed to pay £512,000 for those properties.

I did not know how the consideration for the purchase had been arrived at. I did not raise any question as to the purchase price when I saw the draft agreement.

I signed the agreement, EXHIBIT 58.

I did not myself take any steps to find out whether the Vendors were the actual owners of the properties they were selling to the Company. I trusted Mr. Newbery.

By Court:

If I had put any of my own money into this Company, I might still have taken another man's word, but as a rule one would inquire and satisfy oneself.

Further Examined:

I knew there was a considerable distance between the two properties. I did not know there was a desert between them. No independent report on the properties was obtained by the Company. I had seen reports on the dumps of the Rhodesia property. Mr. Newbery shewed them to me, and a year before I had seen one which had come from the Lomagundi mine.

The agreement, Exhibit 58, states that particulars of development plans of working, details of mineral values, and reports of mining engineers are available. I did not see any such documents, but I had discussed them with Mr. Pearson a year before. I believe the reports are now in the hands of the Board of Trade.

I have seen two days ago a report made by Mr. Pearson which is now in the hands of the Board of Trade, sent to them, I believe, by Mr. Newbery's Solicitor.

When the agreement was entered into, 27th June, 1930, I had an idea how the purchase price was to be paid, the Company had nearly £30,000 in the Bank.

222 I see in Exhibit 56, a minute of 4th July resolving that Barclays Bank be appointed bankers to the Company.

When I signed the agreement the money was not in the bank but Newbery told me he had made arrangements to pay that money into the bank. I did not inquire where the money was coming from. He made his arrangements and £33,000 was paid into the bank a few days afterwards. I had never known Newbery fail on an obligation and I was definitely told so.

There was nothing for a director to control at that time. There was nothing but the inauguration of the Company.

At that time, 27th June, I had not received any remuneration as director.

I received £50 for two quarters. £25 for each of two quarters, or it may have been £37.10.0.

I saw and endorsed the cheque for £33,000, EXHIBIT 60. Mr. Newbery brought it to me. It is drawn by Broad Street Press. I did not ask Newbery about the cheque. I did not know the money was to come from Broad Street Press. I endorsed the cheque and handed it to Mr. S. Brignell to pay into the Company's account.

As to this letter, EXHIBIT 61, from Permanent Investment Ltd. to Vulcan Copper Mines Ltd. nominating Broad Street Press to receive 1,000,000 shares. I did not see that letter.

I do not know who provided the money for the registration of the Vulcan Company.

I signed the cheque, Exhibit 57, for £830 dated 9th July, drawn in favor of Klein. I believe that was in respect of the registration of the Vulcan Company. I did that by 223 direction from 15, Copthall Avenue. Mr. Newbery or somebody in the office told me that we were indebted to Klein in that sum for expenses of registration. No voucher or receipt was shewn to me when I signed the cheque, Exhibit 57. Completion has never taken place.

I don't know who prepared that agreement. I think the work was done at 15, Copthall Avenue. I don't know where the offices of Permanent Investments were. I've met Mr. Ozanne there, at 15, Copthall Avenue. He and Newbery were the only two directors of Permanent Investments Ltd.

As far as I know I had not seen the nomination letters inside the cover of Exhibit 56, before I saw them at the office of the Official Receiver.

The Vulcan Company did not to my knowledge carry out any work on the properties in Africa.

I know nothing of the two directors of the Company in Africa apart from their names.

No one was sent out by the Vulcan Company to investigate the properties, but someone was sent out by the Permanent Investment Co., that was Mr. Pearson, and I believe small cheques were sent to Mrs. Pearson on his behalf.

I took no part in making out the share certificates. I signed them at 15 Copthall Avenue, except as to a few which I signed at Sprange's office. Once or twice I saw the seal of the Company affixed. We empowered Brignell to affix the seal.

Beyond the conterfoils in the cheque book, I saw no accounts of the Company. I neved inquired if any books were kept. No auditors were appointed.

When I signed share certificates I did not know whether they were in respect of cash or vendors shares.

224 I never saw the circular, Exhibit 104. I never authorised Broad Street Press Limited to send out that circular as to the Vulcan Company.

Cross-Examined for Elman

I never saw the accused Elman. He never acted in any way for the Company.

ALFRED HENRY BONNARD.

18th February 1931. ARTHUR FREDERICK SMITH on oath saith:

I live at 65, Powerscroft Road, Clapton.

I am an unestablished clerk in the Civil Service.

I know a Mr. Sidney Brignell very well. I knew him in 1928, and through him I became a director of T. W. Webb & Co. Ltd. I took no active part in the business of the
225 Company. I was merely a nominal director and only signed cheques, occasionally bank transfers, and, I think, also share transfers at 15, Copthall Avenue.

I never attended a board meeting of the Company. I knew nothing whatever of the business transacted by the Company.

I resigned my directorship about November 1930 after attending at the office of the Official Receiver in the matter of the Vulcan Company.

In March 1930, Mr. Sidney Brignell asked me if I would accept the secretaryship of a Company, which I later found to be the Vulcan Copper Mines Ltd. The appointment was offered to me as a nominal and temporary one.

I signed the covering documents for the registration of the Company at 15, Copthall Avenue.

The next thing I did was assisting in the allocation of the share certificates. I held no shares myself. I did not keep the register of members.

In July, I attended the office of the Company at Brignell's request and signed the authority for opening the Company's banking account. I used to meet Brignell 3 times a week and he would tell me if I was wanted at 15 Copthall Avenue. I got all my instructions from Brignell. I did not keep a minute book. At a later date, on 10th November, I wrote the minutes of three meetings in Exhibit 56, at Brignell's request, *i. e.* those of 3rd, 4th and 7th July. I copied them from typewritten sheets which Mr. Brignell handed to me.

I am reported as being present at the meetings in those minutes: I was not so present.

I did not know until the winding up proceedings in November of any resolution for increase of the capital of the Company.

I never attended the registered offices of the Company at 25, Victoria Street. All I did was done at 15, Copthall Avenue.

I never saw any incoming correspondence with the Company nor was I consulted upon any.

226 I never saw or heard of the letter, Exhibit 61, nominating Broad Street Press to receive 1,000,000 shares.

On several occasions I signed letters to Broad Street Press relating to their nominees, they were brought to me sometimes by Mr. S. Brignell and sometimes by Mr. Stirling.

I remember signing some in October bearing dates in June or July.

I signed blank sheets of the Company's note-paper. I may have signed a dozen.

In July I attended at 15, Copthall Avenue on Brignell's instructions and signed share certificates, some already prepared and some in blank. The seal of the Company had not been affixed when I signed the certificates.

I never saw the agreement, Exhibit 58, until 10th November at the Examiner's office.

I never saw any document of title to any properties in Africa.

Sometime in July or beginning of August I signed six cheques, one to Broad Street Press, the others in blank. The cheque to Broad Street Press was, as far as I can remember, for £3,300.

I never kept any books in connection with the Company.

On 7th November with Mr. Sprange I went to 15, Copthall Avenue and saw Mr. Newbery, Mr. Brignell and Mr. Stirling. That was after I'd seen the Official Receiver.

227 Newbery asked generally what had happened and Mr. Sprange and I reported to him what had happened and told him that they were contemplating winding up the Vulcan Company. We discussed the effect of that, and as to whether the assets of the Company should be removed to Buluwayo. I knew there was £28,000 at the bank. Mr. Sterling and Mr. Newbery took a principal part in the discussion.

ARTHUR FREDERICK SMITH.

18 Feby 1931. JESSE HILL on his oath saith:

I live at 9, Spring Street, Hyde Park, W. 2.

I am a mining engineer.

I have known the accused, Newbery, five years.

I became a director of Rhodesia Border Mining Corporation Ltd. at his invitation.

228 My remuneration was to be £200 a year. I held 100 shares. I don't know who paid for them.

My co-director was Mr. Harry Brignell and the Secretary was Mr. T. Beony.

There were two directors in Buluwayo whom I did not know.

The registered offices were at 80A, Coleman Street, E. C.

I received on account my remuneration one cheque for £50 for one quarter.

I did not know Mr. Harry Brignell before I became a director.

Exhibit 133 is the minute book of the Company. I don't know who kept that book.

No board meetings were held at the registered office of the Company, 80A, Coleman Street.

Meetings were held at 15, Copthall Avenue.

Several companies were housed at Newbery's offices at 15, Copthall Avenue. I can't give the names of any of them.

In Exhibit 133 is a minute of a meeting on 5th August at 80A, Coleman Street. No such meeting was held. The minute says I was present. That is untrue.

There is also a minute of a meeting on 6th August at 80A, Coleman Street. No such meeting was held there. No memorandum of agreement was produced at the meeting. The minutes of those two meetings purport to be signed by me. They bear my signature. I signed them sometime in October or November at the request of Mr. Sidney Brignell.

Several other minutes in Exhibit 133 are signed by me. I signed those altogether at the same time at 15, Copthall Avenue at the request of Sidney Brignell.

As to the agreement, Exhibit 132, I was never consulted as to that agreement between my Company and the Pretoria Mining Estates Co. Ltd. I knew nothing about that latter company.

I never saw any document shewing title to those properties in Africa. I discussed the matter with Newbery, who shewed me plans and reports and I had already seen
229 samples of one from the properties, shewn me by Newberry, he told me they were from the properties.

I did not know that the whole of the Vendors shares were alloted to nominees of Broad Street Press Ltd.

I never saw this letter, Exhibit 136, nominating Broad Street Press to receive 1,176,000 Vendor shares, nor this letter, Exhibit 137, of 15th August 1930 nor this letter, Exhibit 138, of 29th August 1930.

I never inquired as to the value of the properties in Africa. I signed the agreement because Mr. Brignell asked me to.

I made no inquiry as to where the consideration was to come from.

I knew nothing about the banking account of the Company. I signed cheques on the Company's account, cheques which had already been drawn. I signed share certificates in blank.

None of the business of the Company was transacted at the registered offices of the Company. It was all transacted at 15, Copthall Avenue.

I never saw this cheque, Exhibit 112, drawn by Broad Street Press in favour of my Company for £33,000.

I never in any way controlled the management of the Company. I do not know who did. My only interest in the
230 Company was my remuneration for my services, which were the signing of necessary documents, which I signed without making any inquiry.

I never discussed the affairs of the Company with my co-directors or with the secretary.

The Company came to an untimely end and we had no time to do any business.

JESSE HILL.

18 Feby 1931. HARRY BRIGNELL on his oath saith:

I live at 47, Londesborough Road, Stoke Newington.
231 I am a commercial traveller.

I have known the accused Newbery about four years.

I have a brother Sidney Brignell. I don't know who employs him. I know he is in the same office as Mr. Newbery at 15, Copthall Avenue, the offices as far as I know of the African Construction Company.

I became a director of the Rhodesia Border Mining Corporation Limited at the request of my brother.

I did not see Newbery about it.

My remuneration was to be £100 a year. I heard from my brother that I had been made a director.

I had 100 shares in the Company. I do not know who paid for them.

My duties mainly consisted of signing share certificates and blank cheques, that was at 15, Copthall Avenue, except as to a few share certificates which I signed at 5, Moorgate Buildings, the office of T. W. Webb & Co. Ltd.

I did not know the directors in Buluwayo.

Meetings did not take place as recorded in the minute book, Exhibit 133. I am recorded as present at meetings—that is untrue. I met the other people mentioned in the minutes at 15, Copthall Avenue, but not at meetings of the Company.

The agreement, EXHIBIT 132, was not produced at a meeting of 6th August as recorded in the minute book.

I do not know who wrote up the minutes in EXHIBIT 133.

I knew nothing of any such resolution as is mentioned in the minute of 18th August and I know nothing of the letter of 15th August, Exhibit 137, nor of the matters referred to

in the minute of 27th August, nor of the letter, Exhibit 136, of 25th August.

I have seen the agreement, Exhibit 132, before, after the winding up I had no knowledge of it at the time it was executed. I did not know where the consideration was to come from.

My brother shewed me several papers as to the properties in Africa. I took no particular notice. I don't think I saw any documents of title.

I see that the consideration in Exhibit 133 is £600,000 which my Company was to pay for properties in Africa.

232 I never saw any documents satisfying me that there were properties in Africa worth that sum.

At no time at all did I have any control of the management of the affairs of the Company. I can't say who did control the Company.

I signed the statement of affairs in the winding up of the Company in which the property in Africa was estimated to produce £6,000 with a note that in our opinion the potential value was much higher. I know nothing personally as to the potential value.

By the Court:

I can't say who first mentioned the figure of £6,000. It wasn't I.

We were at the Board of Trade, four of us, Mr. Hill, Mr. Sprange, Mr. Bonnard and I. No, it was only Mr. Hill and I and the Secretary. It must have been Mr. Hill who mentioned the £6,000. Mr. Hill said that was the figure that was given by the Vulcan Copper Mines.

Further Examined:

I knew nothing at all about the property in Africa.

HARRY BRIGNELL.

18 Feby 1931. THOMAS CAPEY BENOY, on his oath saith:

I live at 38, Fairfield Road, Bromley, Kent.

I am an accountant employed by J. Turner Norris, 19, St. Dunstan's Hill, Chartered Accountant, who audits the Ac-

counts of a number of companies at 15, Copthall Ave-
233 nue, including Mayblossom Mining Co. Ltd., Ranfontein Extension Co. Ltd. etc., African Construction Corporation, whose registered offices are at that address.

I have known the accused Newbery eight years.

In July 1930 I was asked by Mr. Sidney Brignell to become Secretary of a Company which turned out to be the Rhodesia Border Mining Corporation Limited.

I had known Sidney Brignell for eight years, as employed by the African Construction Corporation. Sidney Brignell was a clerk employed by Newbery.

I did not discuss my sercetaryship with Newbery.

I held no shares in the Company.

I signed the application for registration of the Company.

I did not then know Mr. Jesse Hill or Mr. Harry Brignell. I met them at 15, Copthall Avenue, not frequently.

I knew nothing of the two directors at Buluwayo apart from seeing their names.

As Secretary I did not have charge of the minute book. I only saw it, Exhibit 133, at the Official Receiver's office. I had nothing to do with compiling the minutes. I think Mr. Leme wrote them. I don't know when.

The registered offices were 80A, Coleman Street the office of a chartered accountant. I never conducted any of the affairs of the Company there.

I knew nothing about an agreement between the Company and the Pretoria Company.

I did not know of the sale of shares to Broad Street Press except that I signed some letters about it, Exhibit 13, is one of them.

I did not see the agreement, Exhibit 132, until the winding up proceedings. It is signed by Ozanne, director for the Pretoria Company. He is Mr. Newbery's agent in Guernsey.

I never saw any documents shewing title to any properties in Africa.

I signed the form for opening the banking account of the Company on 8th August 1930. A cheque for £33,000,
234 Exhibit 112, was paid in on 15th September. I endorsed that cheque and paid it in. I received it from Mr. S. Brignell, Newbery's clerk.

I did not see the letter, Exhibit 138, until the winding up proceedings.

I signed share certificates at 5, Moorgate Buildings, the office of T. W. Webb & Co. Ltd. and 15, Copthall Avenue. Some I signed in blank. I was rather busy. I did not know what they were for.

I have seen the Company's statement of affairs on the day it was signed by the directors. I prepared it in conjunction with my principal Mr. Norris.

He also prepared the statement of affairs of the Vulcan Company. I helped him.

I don't know how the figure of £6,000 was arrived at as to the value of the properties.

I did nothing in connection with the business of the Company except what I was told to do. I had no real knowledge as to what I was doing.

THOMAS CAPEY BENOY.

235 EXHIBIT 1.

15, Chondos Road,
Cricklewood.
N. W. 2.
13th August, 1928.

Mr. P. J. Groom.
119, Bishopsgate,
E. C. 2.

Dear Sir,

I confirm my telephonic conversation with you whereby I offered you £250 per annum for the offices in Broad Street Buildings, and trust you will see your way clear to accept this offer.

In order to expedite the matter I am giving below three references:—

Barclay's Bank Ltd.,
311, High Holborn,
W. C.

Burnett L. Elman (Solicitor)
27, Lincoln's Inn Fields,
W. C.

Sydney Savile Esq.,
42, Copthall Avenue,
E. C.

Your early reply to my offer will oblige.

I am,
Yours faithfully,
(Sgd) J. WISE.

Mr. Kroppy: And also on the further ground there is no evidence in the case to show that the Live Poultry Dealers Protective Association was organized by any of the defendants in this case to carry on the conspiracy alleged in the amended petition, or that it was organized in furtherance of the conspiracy alleged in the amended petition.

Further, there is no testimony in the case to show any connection between the Live Poultry Dealers Protective Association, and any of the defendants named in this action.

The Court: Is that Live Poultry Dealers Association the one for which Mr. Mintzer is acting now?

Mr. Rice: No, your Honor. The Live Poultry Dealers Protective Association is the association that intervened between the periods when the Chamber of Commerce ceased operation and the period when the new association represented by Mr. Mintzer commenced. There is some overlapping of periods.

[fol. 320] The Court: Objection is overruled. It is admitted.

(The same was received in evidence and marked Government Exhibit 26.)

Mr. Rice: If your Honor please, I had understood Mr. Kaufman wished to have the Government stipulate that the assignment contracts listed on Exhibit 26 were made one year prior to the date of expiration indicated on the right-hand column.

Mr. Kaufman: That is correct.

Mr. Rice: Now, as I say, the Government is willing so to stipulate. Exhibit 27 for identification represents a list of the markets which made assignments of ten cents per coop owing from the New Jersey Coop Company and Bernstein & Sons, Incorporated, to the Live Poultry Dealers Protective Association, for the period commencing November 16, 1928, and continuing until November 15, 1929, leaving out the legend now at the top of that page.

The Court: The same objection?

Mr. Kroppy: Yes, sir.

The Court: Same ruling. It is admitted.

Mr. Kroppy: Exception.

(The same was received in evidence as Government Exhibit 27.)

Mr. Kaufman: Do I understand you then to say that during this period there was an overlapping in that there were two assignments, one to the Chamber of Commerce and one to the Live Poultry Dealers Protective Association?

Mr. Rice: Yes. Exhibit 28 for identification represents the amounts of the payments from week to week by members of the Live Poultry Dealers Protective Association of New York and vicinity to that association by virtue of the assignments of the ten cents a coop owing from the New Jersey Coop Company and Bernstein & Sons. This covers the period from December 3, 1928, to and including September 10, 1931. The dates of the respective payments made by the New Jersey Coop Company and Bernstein & Son, to the Live Poultry Dealers Protective Association of New York and vicinity is indicated opposite each payment.

[fol. 321] The Court: Any objection?

Mr. Kroppy: Same objection.

The Court: Same ruling. Received.

Mr. Kaufman: Exception.

(Government Exhibit 28 for Identification was received in evidence as Government Exhibit 28.)

Mr. Rice: Exhibit 29 for identification is a list of the markets with their addresses, who made assignments of ten cents a coop owing from the New Jersey Coop Company and Bernstein & Sons to the Live Poultry Slaughter House Association for the period of one year commencing September 8, 1931, to September 7, 1932. * * * I offer Exhibit 29 in evidence without the notations which I have read.

Mr. Perlman: That is right. We understand whatever is stricken out is not in evidence. Before that is received, may I ask Mr. Rice to tell me please, if he will, whether he contends that the formation of the Live Poultry Slaughter House Association is a part of the conspiracy of these defendants to continue a violation of the Sherman Anti-Trust Law?

Mr. Rice: I decline.

The Court: Is there any other objection?

Mr. Perlman: I object to it on the ground there is no proof at this time that the Live Poultry Slaughter House

Association is in any way connected with these defendants or is organized and doing business in furtherance of the conspiracy.

The Court: Overruled. Proceed.

Mr. Perlman: Exception.

(Government Exhibit 29 for identification was then received in evidence as Government Exhibit 29.)

Mr. Rice: Exhibit 30 for identification represents the total amounts of the weekly payments of the ten cents per coop to the Live Poultry Slaughter House Association by Bernstein & Sons, Inc. and New Jersey Coop Company, covering the period from September 17, 1931, to and including November 19, 1931.

The Court: Any objection?

Mr. Kaufman: I object to it on the ground that it is im-[fol. 322] material and irrelevant and no proof of the conspiracy alleged in the amended petition.

Mr. Kroppy: I make the same objection I made before to the admission of the other exhibits.

Mr. Perlman: Again it is a duplication. Exhibit 29 lists assignments of Live Poultry—I see these are payments as to assignments.

Mr. Rice: Yes.

Mr. Perlman: The same objection we made to the others.

The Court: The objections are overruled. Received.

Mr. Kroppy: Exception.

(The same was received in evidence as Government Exhibit 30.)

Mr. Rice: Exhibit 32 for identification is a list of markets classified according to the various districts of the city who made assignments of ten cents per coop owing from the New Jersey Coop Company and Bernstein & Sons to the Greater New York Live Poultry Chamber of Commerce for the period from November 16, 1926, to and including November 15, 1928.

The Court: Any objections?

Mr. Kroppy: I make the same objection I made to the admission of the other exhibits.

The Court: Overruled. Proceed.

Mr. Kroppy: Exception.

(Exhibit 32 heretofore marked for identification received in evidence.)

Mr. Rice: It is stipulated that Exhibit 29 be considered to include all of the markets on Exhibit 26, excepting those where on Exhibit 26 it appears that the markets' assignment expired prior to September 8, 1931.

[fol. 323] (The following testimony of Government's witness, Samuel Garber, given at a former trial on October 29, 1929, was read in evidence pursuant to stipulation, subject to objection and exception as to its competency and materiality:)

Direct examination.

By Mr. Rice:

The Witness: I have been in the poultry business seven years. I was associated in business with Harnett & Son in 1928. While I was in business with Harnett I bought poultry in Baltimore and Philadelphia. I was not a buyer in the Washington Market. I had a conversation with David Hirshon about that time. It was about three days before the Passover Holiday in 1928. I told him, in the New York office of the Chamber of Commerce, he should give me permission to take stuff in Washington Market and he told me I couldn't get the poultry in Washington Market. That is the only conversation I had with him at that time, and then I went away to Baltimore.

I stayed with Harnett's firm about eight or nine weeks, and left it about May 10th or May 5th. Then I went away to my place to buy poultry. I had my own business 76 Prospect Place. I had a conversation with Hirshon before I left Harnett. About six days before I asked him he should give me poultry, I want to be in the same business, in the wholesale business. He said if I wanted I should go from the Harnett corporation, then he will give me stuff. He asked me to take $50 a week—there was three people there, myself, Jake Siegel, and Harnett, and he told me he give me a hundred and fifty dollars a week—fifty dollars for each—then he said that is not enough, then he said "You cannot get any poultry." He was going to give me the

$50 I shouldn't be in the poultry business but should be [fol. 324] back in my place and should pay six cents above the market. I told him I wouldn't pay six cents above the market but only four, it was killed in my store. Then he said "All right, I will talk it over to Rubin." Then Rubin came himself to my house and he said he will give it at four cents, and I went away from him to kill my poultry. I did not accept Hirshon's offer. I did not do any wholesale business after that. After the fire I went out. I did not get the $50 a week. That's all that happened at that time. I don't remember no more. They were picketing my store. At the time they were picketing my store, I had a conversation with Hirshon about that. I told him he should take away the pickets. He said if I will get out from the Harnett corporation and the wholesale business. I went out of Harnett's corporation and they stopped picketing my store after that. I did not recognize any of the people who were doing the picketing because I was too nervous. There was a whole lot of shochtim there. They were changed every two hours. I do not see anybody in this court room who was picketing my store. They were only shochtim with big beards.

I know Kalman Shapiro. He was there, he was talking to me. After that, Mr. Hirshon told me to buy from Rubin and I did buy from Rubin. It was when I was in the wholesale business with Harnett, he didn't sell it to me. He told me to go to my place, to Mr. Rubin. I tried to buy from Morris Gordon; I did not get any poultry there. Kalman Gordon, he is there, he told me he will give it to me, and he went in and said no, he won't give it to me.

These conversations with Hirshon and Gordon, they were about the spring of 1928. At the time that Hirshon and [fol. 325] Gordon told me to buy from Rubin, Rubin told me Washington Market is today 38, I must pay 42. If the market was 34, I pay 38. This was when I was in business for myself. I always had the same store and I got now the same store. I paid four cents above the market a few weeks. Then he started to charge me again five—six. Then I called to Mr. Morris Gordon they should straighten it out, because he give me his word and took back his word and Mr. Gordon said it is not enough, five or six cents is not enough, that is all he said and I went away and I must

pay more. Then I pay five cents and six cents and six again above the market. I had been paying two cents above the market before that time when I bought anywhere I liked. In September, 1928, I paid three cents. I don't know defendant Arthur Herbert, known as Tootsie Herbert, or Sam Lipkin.

Cross-examination.

By Mr. Sager:

The Witness: I had been in the poultry business seven or eight years. I was in business with Harnett & Company eight weeks from about the end of February, 1928 to May, when I went back to the same store. When I had my store before I had the same business. When I came in as a partner of Harnett they took off the shochtim. I don't know what we paid him. Only one shochet was there.

There was no strike on at the time of the picketing. All of this occurred when I was in partnership.

My store was located in Brooklyn and I continued that business when I was in partnership with Harnett at the same time. For my retail business during the time I was connected with Harnett & Company I came once to Rubin and he refused to give it to me. When I came to Rubin for [fol. 326] chickens my chickens were burnt. I bought from Rubin chickens until I became partners with Harnett.

These men that were picketing my store in Brooklyn told the women who wanted to come to buy chickens in my store not to buy any because these chickens are from scabs. To prevent picketing of this store, I went to Judge Goldstein, my lawyer, to get out an injunction. I made out the papers or application for injunction in the Supreme Court in Brooklyn.

By Mr. Kaufman:

The Witness: When I went back to my own retail store I bought chickens from Rubin and paid four cents above the quotations in the Washington Market. The chickens that I bought from Rubin were already slaughtered chickens. The four cents difference was the cost to Rubin of handling slaughtering and delivering those chickens and a profit to him for the handling of those chickens. If butchers go to

the Washington Market they have to deliver it themselves. When I bought from Rubin he delivered the poultry to my store.

After I left Harnett & Son I bought chickens from no one else except Harry Rubin. After May, 1928, I did not buy chickens from Morris Grodon or David Hirshon. After the Jewish New Year, I bought chickens from Taits a few times, two days before New Years in September, 1928. I bought from Morris Hallman after May 1928, at the same time that I bought from Taits. I did not try to buy chickens from any one else except Rubin, after May, 1928. I tried [fol. 327] only to buy at Hirshon before I became a partner with Harnett. I tried to buy from Morris Gordon, May 10th or May 15th. After I left Harnett, he told me "Why don't you take from Rubin?" I told him that Rubin changed his mind. I spoke to him about four, and now he wanted six. Then Morris Gordon told me, "Come with Rubin Sunday morning to my place and I will talk it over with Rubin." That is the only effort he ever made.

By Mr. Shalleck:

The Witness: When I saw shochets with beards in front of my store picketing there were two of them changing it every two hours. I saw Kalman Shapiro standing across the way. I came over to him and asked him what will be the end of it all. He says "We will see how we can straighten this matter out." That is all. I heard in the city from shochtim who said that Shapiro is the president.

Redirect examination.

By Mr. Oseas:

The Witness: I came to Gordon and told Gordon he should try to straighten the matter out. At first we spoke of four cents and then they spoke of six cents. He answered me it was not enough for him to take six, he ought to get more. Then I went away; I saw I cannot help myself and I paid six. Before the picketing started I had been employing a union shochet, I forget the name.

By Mr. Shalleck:

The Witness: Shapiro told me that if I take in two shochtim they will stop picketing. "I can only give you

shochtim and that will stop the picketing, but I do not know anything about the merchandise, I cannot help that." That [fol. 328] is what Shapiro said. I never had two shochets before, only one. I do not know whether the union rules provided for two shochets at that time. Prior to that time I never had a shochet in my own retail store. And the only time when I did have a shochet was the time I was *was* with Harnett. When Shapiro asked me to have two shochets, he meant at Harnett's place.

The following testimony was given by the same witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am still in the chicken business. From October or November, 1928, up to the present time, I have not had any trouble getting poultry.

Mr. Kaufman: I move to strike out all the testimony of the witness on the ground it is all immaterial to the conspiracy alleged in the amended petition; and on the further ground that all of the acts as to which the witness testified relate to acts in intrastate commerce, having nothing to do with interstate commerce.

The Court: Denied.

Mr. Kroppy: I join in the objection, and also object on the ground it has no tendency to prove that any of the acts were committed in pursuance of the conspiracy alleged in the amended petition.

The Court: Denied.

Mr. Kaufman: Exception.

Mr. Kroppy: Exception.

Cross-examination.

By Mr. Kroppy:

The Witness: I don't know of any market men at all who refused to sell any retailers live poultry since October or November, 1928. They gave to everybody after that time. I paid three cents before 1926 and I pay now three [fol. 329] cents. It was only the two years from 1926 to 1928 that they charged more than three cents.

[fol. 330] HARRY STAUBER

(The following testimony of the Government's witness, Harry Stauber, given at a former trial in October, 1929, was read in evidence by stipulation, subject to objection and exception as to its competency and materiality):

Direct examination.

By Mr. Rice:

The Witness: I am in the retail poultry business in Brooklyn, five years. I buy the poultry already slaughtered, sell it as fresh killed poultry. I bought my poultry in Jun-, 1927, from Dworkin & Blumenfeld. I tried to buy poultry some place else during that summer of 1927. I tried with the Prospect Poultry Company, where I spoke to Charles Bistretsky (identifying him). I spoke only to him. I told him I want to buy some poultry for cash. He said "I wouldn't sell you any poultry. You better go back to where you belong." I said "What do you mean, I shall go back to where I belong? I am going to buy poultry for cash, American money." He said, "I am sorry, you will have to go back to Dworkin & Blumenfeld." When I first started to buy I used to pay Dworkin & Blumenfeld two cents above the market. A few weeks later he raised me to four cents. I asked why the raise was. He said "There is an association; we cannot afford to sell at two cents, we must have four cents, and if you don't buy here you cannot get poultry anywhere." The man I talked to is Harry Dworkin. A couple of weeks later he raise me to five cents. It was in the early months of 1928. I said "You just raised me, why should I pay more"? He said "That penny doesn't come to me, anyway, we got to give that penny to gangsters, you shouldn't kill anywhere else." In 1928, I went in to Jack Mintz, and I wanted to buy some poultry there. He sold me some poultry and he [fol. 331] asked me "Where have you been buying your poultry?" I said, I buy my poultry all over. He sold me some poultry at a certain price. Before the stuff was charged to me he said "What number is your store?" I told him 1750 Prospect Place. So he went in the office and he said to the partner, "I better call up and find out where he kills his stuff," so a couple of minutes later he said to

me, "I am sorry, I cannot give you your poultry, you better go back to Dworkin because you buy your poultry from Dworkin." In my presence, he called over J. Hassenfranz—he said, "I will sell you that poultry that Harry calls for. I will sell it to you, but I won't sell it to him." He said, "Go back to Dworkin."

I also went down to Harnett & Son. I bought there some poultry. He said "I will sell you some poultry, but I will not deliver it to you, you will have to take a taxi." I did buy the poultry and took a taxi. As soon as I arrived at my store there was a man—I couldn't call his name—I could recognize him. This is the man (indicating). As I brought in the stuff for the taxi, he said, "Where do you kill your stuff?" I told him by Dworkin. He said, "No, you are lying, you don't kill by Dworkin." That day I did kill by Dworkin, but for the second time I bought from Harnett. It was about eleven o'clock, so I took out a charge ticket and showed him I did kill by Dworkin. Dworkin told him he did kill in the morning, but for the second killing I did not come down to him. He warned me, he said "If you are not going to buy the stuff where you always buy you are going to get a beating." There was with him on that occasion Kowlow. Then that day he told me he heard I am selling some poultry to butchers. [fol. 332] "Yes," I told him, "I didn't know if it is a butcher, I sell to anybody that comes in my store. I don't ask him whether he is a butcher or a customer. Anybody that comes into my store I sell him." He said, "You better keep away and not sell wholesale to butchers, because I am going to give you a good beating." This man over there (indicating defendant Kowlow); that man was there in the machine. Whether there were any other places where I tried to buy poultry at that time I cannot recall.

No one else told me I had to buy poultry from Dworkin and Blumenfeld besides the people I have mentioned. I had a conversation with Charles Herbert in Dworkin's place in the early months of 1928. He also heard that I am selling wholesale stuff to butchers. I denied that to him. I said I don't sell. He said "Well, I heard that you do sell to butchers stuff." I told him, I don't know, a man comes in to me in the store, buys poultry and pays cash, why shouldn't I sell him. Mr. Koslow was also there in a

machine. He wanted to give me a beating. He said "You better keep your mouth shut. If not, I am going to beat you up." Charles Herbert said that and I promised him that I wouldn't sell any. At this time that I talked to Carl Firestone about buying from Dworkin he also told me I shouldn't sell to butchers; if I am going to sell to butchers, I wouldn't get stuff. If they find out I get stuff he is going to beat me up.

Cross-examination.

By Mr. Sager:

The witness: I did business in Brooklyn in what is known as the Brownsville district. I was strictly a retailer. The [fol. 333] business was conducted under my own name alone. I had no license to slaughter poultry. I handled what is known as dead poultry. There was some complaint from some of these parties about my selling to butchers. I did sell to a couple of butchers, 25 or 30 pounds to each one. I do not know the names of them. I had some dispute with Firestone, Mr. Herbert and Mr. Koslow. I think Koslow and Herbert were together. Koslow was sitting in the machine outside. I and Herbert were outside also, in front of Dworkin & Blumenfeld's market. I did not have any conversation or altercation with Mr. Herbert or Mr. Koslow, other than on that occasion. I had some altercation with Mr. Firestone. He was not present at the time we have just discussed. Firestone was in my business place about April, 1928. With him was Sam Lax and Mr. Koslow. They were outside the place; I didn't let them in. As soon as I came in they said, at the entrance to the store, they stopped me off and they asked me where I killed the stuff. They drove up in a machine. They all got out of the car. I had my talk with Firestone. The others were simply present. I had two altercations, one with Herbert and with Koslow, in the early months of 1928, January or February, and the second altercation was with Firestone where these two other men were present in April, 1928.

I say the price of chickens was raised from two to four cents along about October or November about two years ago, 1927, by Dworkin & Blumenfeld. When I say they raised the price they had been charging me at that time two

cents above the market price that the marketmen have to pay the commission men. It is the published market price [fol. 334] that obtains from day to day in the Washington Market. The marketmen were getting two cents a pound for handling the chickens, for their overhead and their slaughtering, and up to October, 1927, they were only charging me two cents profit. In one of these altercations, I think it was with Mr. Firestone, he told me he would beat me up if I didn't quit talking. I couldn't blame him for that, he is stronger than I.

Cross-examination.

By Mr. Kaufman:

The Witness: At the time that I saw Charles Herbert, he didn't tell me his name. Before that I saw him too, but I didn't know his name. I remembered him because he had a cut on his face. I asked somebody else in Dworkin's market what his name was and he told me. I remembered him from the time I saw him, in the latter part of 1927.

I had one altercation with Firestone at Dworkin's place of business. I think I had another one with him. He also told me I should be a good boy and kill the poultry there in his place because otherwise I wouldn't get any stuff at all.

By. Mr. Shalleck:

The Witness: I was not beaten up by Firestone or Herbert. After I got that warning I did retail business and did not sell to butchers. I did not see them again after that.

(End of testimony given at previous trial, read into the record.)

The following testimony was given by the witness Stauber at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I have been in the butcher business since the [fol. 335] Jewish holidays in October, 1927. That is the time that I had the trouble that I testified to. Since that time in 1927 I have had no trouble at all. I have been getting poultry all over, wherever I go. I have always bought poultry

from marketmen and not from the receivers in West Washington Market.

Mr. Kaufman: I move to strike out this witness' testimony on the ground that it is immaterial, and on the further ground that it discloses beyond any question that all of the transactions that this witness had, dealt with intrastate commerce. It dealt with transactions between himself and market men and according to the decision of the Circuit Court of Appeals, that was clearly intrastate.

The Court: Denied.

Mr. Kaufman: Exception.

Cross-examination.

By Mr. Kroppy:

The Witness: I don't know of any other retailers or any other dealers in live poultry who have been unable to obtain poultry from either the market men in New York City or anywhere since the fall of 1928. Even those who refused me at that time—I am buying the poultry now there, all over. I don't know of any case where any of these marketmen have refused to sell anybody else any poultry since the fall of 1927.

Re-cross examination.

By Mr. Kaufman:

My trouble lasted during October, November and December of 1927 and possibly a month or two in 1928. At the Easter holidays in 1928, I had no more trouble. I haven't had any trouble since, and I never heard of any other having any trouble since.

Redirect examination.

By Mr. Rice:

The Witness: I don't remember exactly which months, but I am sure in the late months of 1928 I was getting poul-
[fol. 336] try all over. It is possible I may have been having trouble in May, 1928, and my trouble with Carl Firestone may have been in May, 1928.

(The following testimony given by MAX GORDON, a witness for the Government, at the former trial in October, 1929, was read in evidence by stipulation subject to objection and exception as to its competency and materiality):

Direct examination:

The Witness: I am in the retail poultry business and sell slaughtered poultry. I have been in that business twenty-five years. During the summer of 1927 I used to buy all over. Since the existence of the Chamber of Commerce we have to buy one place, Bernstein & Sorkin; that was about the fall of 1927.

I stayed with Bernstein & Sorkin a couple of months. I tried to go all over and I couldn't get it. I called up Louis Maritzky. He said "I cannot sell you no poultry, because I will be in Dutch." Jake Koslow, I used to deal with him. Hirshon, Morris Gordon, Louis Maritsky, Dave Hasenfratz—I know every one here, and what's the use. Nobody wants to sell me poultry. I went downtown. Nobody would sell me. I used to deal with Abie Wolff, too, and Dave Gordon.

I remember one day I went to Frank Siegel in Ozone Park to get some ducks. I got them. It was this time of the year two years ago. Bernstein & Sorkin buy ducks from West Washington Market. They asked me five, six cents a pound more. I said I cannot afford to pay five, six cents a pound more. I went to Ozone Park and bought at less and I got the ducks in the house and after a fellow came down from Bernstein & Sorkin and said "I know where you got the ducks." I said to him "What's the matter, can't I buy where I please?" He said, "No, sir, you got to buy one place."

On the second day we used to mark the stuff, we used to kill poultry, five or six coops, and I came to the place and [fol. 338] marked my coops, the number, to show they belonged to me. I came to the place and I find my poultry gone. I say, "Dave and Mr. Sorkin, what do you call this?" He said "We are going to fix you for this." I came down to the market today and I couldn't find my poultry. I took my machine and went away to Ozone Park and

just when in his place I went in behind the coops and all of a sudden appears three people on top of me—Jake Koslow, Carl Firestone and Sam Lipkin. Sam Lipkin said, "This is the guy we are looking for." He started to argue with the marketman what kind of business have you to sell him poultry. He said "I didn't sell him poultry. The trade is open. Everybody welcome. Let him come in." And I had a little argument, had a fight. I said "I see I am in Dutch," and I took my machine and went away. I did not get any poultry from him. It was about eight o'clock on a holiday. When I have to get by five o'clock my poultry in the store. I couldn't get no poultry. I went to East New York again, to Belmont Avenue, by a retail man. He sold killed poultry; Morris Levitz. All of a sudden he backs a big truck. We kill poultry. I said "Morris, do me a favor, I am in Dutch, I couldn't get a pound of poultry." He said "What do you want?" I said, "I don't care; give me something. There is a crowd in front of my store, women, and I couldn't get a pound of poultry. It is nine o'clock already." So I don't know what he got in the bag. I say, "Put it in my machine, I am glad I got the poultry for the store." I don't care what kind of poultry as long as I got anything to sell. The same time I call up a marketman by the name of Dave Hasenfratz. I say, "Do me a favor. I used to work with you together. Send me something." [fol. 339] He said "I couldn't help you, the crowd is lying on top of me not to sell poultry. Well, I will try to change. In case they go away, I will send you a coop of poultry." About eleven o'clock he sent me a coop of poultry. He sent me lights. I need heavy. I went back and said "Send me any place in your name half a coop of anything." I went to a woman. She called up Louis Maritsky, and said "Send me"—not on my name but her name. He sent me half a coop and I must carry it on my shoulder to my store, about five blocks. They were watching the machine. We passed the holidays. After the holidays we have to get a place to buy poultry. As long as Dave Hasenfratz helped me out, I want to go to Dave Hasenfratz to buy poultry. I went to Attorney General Ottinger and after I went to see him, I went to Benjamin Simon the same day. I said "Mr. Simon, I see you the first time. I am an old timer in West Washington Market. I used to

work for fifteen years carrying coops and everybody knows me. It is hard work. Give me a chance to live. I am paying my bills. I don't owe anybody any money." He said, "I will fix it up. Where do you want to go?" "I want to go all over." He said, "Nothing doing; you go in one place," Benjamin Simon told me. He said "You can't go all over." I said, "I will go to Dave Hasenfratz, it is near to my place. All right. I done him a favor, I got to do him a favor, he won't lose anything, I will stay by him." I went to him. As soon as I make a killing Monday I come down, and the second killing, he said "I am sorry, Max, you are an old timer, I can't sell you poultry." At the same time I find Jake Koslow was over there. What he [fol. 340] speak to him, he don't tell me. I said "Dave, how is that, Benjamin Simon told me——"

Mr. Halheimer: I object to that conversation had with a man by the name of Hasenfratz. He is not a defendant in this case.

Mr. Oseas: Of course not, but Benjamin Simon sent him over.

Mr. Halheimer: I object to any conversation had with Mr. Hasenfratz.

The Court: Overruled.

Mr. Halheimer: I didn't object up to this point, but it was incompetent before when he testified to it, and I move now to strike it out.

The Court: Denied.

Mr. Halheimer: Exception.

The Witness: Dave Hasenfratz said "I cannot sell you poultry because you got to go back to Bernstein & Sorkin." I said, "No, I will close the store, I will go out from the business. I wouldn't go." I say "I will go up to Benjamin Simon again." I called up Benjamin Simon. Benjamin Simon said "You stay where you are." I told Benjamin Simon over the phone that I could not buy from Hasenfratz. I called him up over the phone. I say he won't give me the poultry. He call up Dave. He speaks to Dave, right away, at the same time. He said "Give him the poultry." He started to hand me poultry. All of a sudden the shochet would not kill for me. I went again to the District Attorney Ottinger.

After I had my talk with the Attorney General, I went back to Hesenfratz alone, and the shochet killed for me.

After this, he gave me such a breakfast, I couldn't eat no dinner, I couldn't eat no supper, he gave me such stuff. I threw it out. I said "I cannot deal with you. I am done [fol. 341] with you." He said "You are again in trouble." He said "I don't keep you, you go where you please."

One day I went to Morris Gordon. First I went to Dave Hirshon. Hirshon told me "What's the matter; again in trouble?" I said "I don't want to stay by Dave Hasenfratz. He don't want to recognize me. He don't want to talk to me." I said "You drop it with Dave Hasenfratz altogether." He said, "You got money; I sell you poultry." I said "What's the matter, two years ago you don't ask me for money? How much my bill amount to? When I sell a hundred pounds of poultry, $35." He never ask me for money one year ago when I went to buy poultry.

The same day at nine o'clock, I couldn't get no poultry. It was a week day. I went to Morris Gordon. He said, wait, he is busy, he got to send out the merchandise. "What do you want again?" All of a sudden Carl Firestone came down with a machine. He went in the office and started to talk with him. He said "Where are you going?" I said to Louis Maritsky. I went to Louis Maritsky. Firestone took me with his machine, and he started to bring me over, and I started to deal with Louis Maritsky and after I deal about three or four weeks, I see every marketman said, "You want to buy of me poultry, I can sell you what you want." Another marketman, another marketman; they all started to come in the summer, I guess last year. The last summer was the first time any marketmen came around and asked me for business.

I bought poultry for Joe Hasenfratz. I had a conversation with Louis Maritsky, a marketman, about buying poultry for Joe Hasenfratz. He said "I will get in trouble, don't put me in trouble." After October, 1927, I paid [fol. 342] Bernstein & Sorkin about ten cents above the market. Just before that, when I bought all over, I paid three, four and five cents on springs. At the time these three people followed me into the market in Ozone Park, they talked to the marketman. There was no disturbance of any kind.

Cross-examination.

By Mr. Jacobson:

The Witness: Samuel Lipkin was one of the men who came into the Ozone Park place. He was a bookkeeper then for Charlie Werner, one of the jobbers or receivers in West Washington Market. I used to work with him. I was downstairs lifting coops. After I quit West Washington Market, I went in the slaughterhouse business. During those two months I used to go to West Washington Market to buy goods, to Charles Werner's place, ten or twelve years ago. Sam Lipkin did not refuse to give me goods. I will show you the bills. I went to buy goods for Joe Hasenfratz in my name, because nobody wanted to sell him poultry, he is in Dutch. He said that to me before. My credit was good. I told every marketman you better take cash. They said we don't want cash.

It was Dave Hirshon who said "You got money, I will sell you." Morris Gordon didn't ask me for money. He said "I can't sell you poultry." Then I went to Louis Maritsky; he sold me poultry on credit. I always bought on credit; I am paying a thousand dollar bill now on credit. I said to the marketman "Go ahead, I will pay cash." They don't want money from me. They trust me all over.

I was paying nine and ten cents above the market, to [fol. 343] Bernstein & Sorkin. I will bring you the bills for the year 1927 and for the early part of 1928, before it became B. Taits. I bought from the same place when it became B. Taits one week. After Bernstein & Sorkin left it, and B. Taits went in, I wouldn't buy from him, because I heard they done a dirty trick to the rest of the dealers. I had trouble with Bernstein & Sorkin because he charge me five or six cents a pound more. Bernstein & Sorkin told me I could not buy any place else. Dave Danziger and Louis Sorkin told me that. The Chamber of Commerce was not selling me in 1927. Before that I had not dealt with Bernstein & Sorkin. One week I started to deal with him and after he went up and up and up, I didn't care about prices, but when he got to 39 cents, I said I cannot pay, I got to pluck it, and the blood goes out, and I will have to charge 50 cents a pound for poultry. I didn't tell them I wanted to buy all over. "You can go," he said, "I don't

keep you here." I didn't say he said he was going to do something. He told me to go ahead, do what you please.

Carl Firestone and Lipkin and Koslow came up to Ozone Park. They did not mention Bernstein & Sorkin's name. They didn't say they were sent there by Bernstein & Sorkin. They just came there to see what I was doing. When I came back to New York it was Carl Firestone who took me over to Louis Maritsky's place with Morris Gordon's permission. I wanted to change my dealer from Bernstein & Sorkin to Louis Maritsky. I paid Bernstein & Sorkin. I was sitting in a restaurant, and he said "Give me a hundred dollars." I said "Here is the hundred dollars, what is the money for? You never asked me for money before." [fol. 344] I came back to the market and found my goods sold. I said "Is that the trick you play on me, you take in advance for the money and sell my goods?" Then I went to Dave Hasenfratz. After that I went to Louis Maritsky. After this money, I deal with Dave Hasenfratz. He sold me poultry on the credit of a week. I bought from Dworkin & Blumenfeld. They sued me for not paying the bill. They did not get a judgment against me, because I didn't owe them any money.

By Mr. Halheimer:

The Witness: I remember the day I went over to the Attorney General, this time of the year 1927. I saw a man there by the name of Mr. Groat, who sent me to see Mr. Simon. I spent about an hour with Mr. Simon. He asked me whether I owed any poultry dealers any money. I told him that I owed some poultry dealers money. I paid it.

By Mr. Oseas:

I told Mr. Simon I paid my bills. I got poultry after that from Dave Hasenfratz.

The following testimony was given by the said witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I still have a chicken store. In 1928 I was able to get my poultry everywhere. Since that trouble that

I testified about in the criminal case, I have been getting my poultry without any trouble of any kind. I have not heard of anybody who has been having trouble during the [fol. 345] last three years.

Cross-examination.

By Mr. Kroppy:

The Witness: Since 1928, I have not heard of any of the marketmen in New York City refusing to sell any poultry to retailers in New York, except they don't pay their bill.

Mr. Kroppy: I move to strike out all of the testimony given on direct examination on the grounds previously stated, in reference to the testimony of the other witnesses, and I urge my motion on the ground, further, that none of this testimony tends to show that any of the acts or transactions or declarations made during the period testified to tended to show that there was any intention on the part of the market men or any of the defendants to restrain interstate commerce, and that the acts and the declarations were limited to carrying out of the conspiracy in restraint of intrastate commerce alone.

The Court: Denied.

Mr. Kroppy: Exception.

Redirect examination.

By Mr. Rice:

The Witness: My trouble started in the latter part of 1927 and it lasted up until the middle of 1928 or so.

[fols. 346 & 347] DAVID HASENFRATZ

The following testimony given by DAVID HASENFRATZ in behalf of the plaintiff in a previous trial in October, 1929, was read in evidence pursuant to stipulation, subject to objection and exception as to its competency and materiality:

Direct examination.

By Mr. Oseas:

I sell slaughtered poultry. I buy my poultry alive, at West Washington Market and sometimes at the Central, Delaware and Erie and Penn. terminals. I have been in the poultry business thirty-two years, eighteen years at 718 New Lots Avenue, Brooklyn. I am a member of the Greater New York Live Poultry Chamber of Commerce. I joined about three or four years ago, since there was a Chamber of Commerce. I know defendants Hirshon, Koslow and Morris Gordon.

I had a conversation with Hirshon about April, 1928, in his market. I didn't say nothing to him. He told me he wants $125 for the two weeks, during the Passover holiday. I had had no prior conversation with him. He told me, "We have got to pay something to the association." That is what I got to pay, is $125 a week for the two weeks; that is Passover. I paid that, but after that I did not pay him any more. I paid the money to Sam Lipkin in my office. (A person stands.) That is the man. I do not know the times I paid him. I made other payments outside of that $250; maybe a week or two later I gave him fifty at a time. No more than -125 and -50. I agreed to pay $50 with the same Sam Lipkin—either Hirshon or Sam Lipkin, there was the two; I cannot tell you exactly; sometimes Lipkin and sometimes Hirshon. I paid maybe four, five or six or seven weeks; maybe more. Sam Lipkin and Michael Lax collected the money. (Lax stands up.) That is the man. Carl Firestone was around once or twice but I did not pay him the money.

I did not have any conversation with any of the defendants with regard to the people to whom I was to sell poultry. I was doing a wholesale business at that time, [fol. 348] selling 10,000 pounds, 8,000 pounds per week. Lipkin and Hirshon told me not to sell to strange butchers; it was at or about the time I was making these payments Sometimes I sold to strange butchers. The shochet did not want to kill it. I got my poultry in West Washington Market. I got stopped once or twice by the Western Commission Company; they would not give me stuff. I spoke to Irving Sokoloff. He said I can't get any poultry but did not want to say why.

I also tried Manhattan. I don't remember to whom I spoke that time, but they didn't want to load me; the workmen would not put it on the truck. I straigthened it out afterwards. I spoke to Charley Herbert. He wanted I shall get in two union shochtim, so I got two shochtim in and he started in to load. At that time I had shochtim, but not union shochtim. I paid a short time and stopped. Nothing happened when I stopped the payments. When I stopped paying, I got poultry all the time. This money was paid to the Chamber of Commerce. These $50 and $75 payments were before I paid $125 for two weeks. Then I paid $125 and then it went down again to $50. I remember having been stopped for a couple of hours in West Washington Market. Hirshon asked me for $125, instead of $50. I didn't pay him right away, but a week later. After the conversation with Hirshon I got my poultry.

Cross-examination.

By Mr. Kaufman:

I was in business, in Brooklyn. I had two workmen, two rabbis, that is four. The workmen were members of the union, but the rabbis were not members of the union at that time yet. They were working for me and I got stopped in the morning on account of the shochtim. It was not union help. Then they became members of the union, and I was stopped until these men became members of the union. The stopping consisted of the fact that union men in the market refused to load my product. After those shochtim [fol. 349] joined the union, I refused to pay them the increased wage, and there was a dispute between me and some officials of the union. I adjusted the wages with the men. The only two times I had any difficulty with the union was first when the shochtim were not members of the union and second when I had a dispute about paying them the union scale of wage.

Cross-examination.

By Mr. Jacobson:

I was told not to sell to stranger butchers. There has been lots of trouble with butchers, pretty bad in paying bills. I discussed with the marketmen the subject of sell-

ing to strange butchers. They told me we should not sell to the butchers that owed bills in the market. I spoke to Hirshon, Shapiro and Sam Lipkin. In my market they were talking to me. When we talked about it, we were also talking about how the butchers ran around to all other marketmen and run up bills all over. We talked about how we didn't even know the names of the butchers. I didn't know their names, I knew the numbers. We talked about how the butchers would open a place and run up bills and then close it, and then go to another district and run up other bills; also how the butchers only had a block and a hook and scales for the whole trade. The talk when I was told not to sell strange butchers occurred just before I paid the $125 per week. I was told in connection with that, that it was necessary, in order to keep track of a butcher's credit, that he deal at one certain place. I was told that I should not sell a strange butcher until he had paid his bills to the dealer he was dealing with.

One of the places I went to buy poultry was the Western Commission Company in West Washington Market and I talked to Irving Sokoloff. He sold me all the goods I wanted, but the men refused to load. Before I paid the $125 a week, I cannot tell you how long I had paid that $50 a week.

[fols. 350 & 351] Redirect examination.

By Mr. Oseas:

When I talked about the strange butcher situation and mentioned Shapiro, I meant Shapiro the shochet. (A person stood up in the courtroom.) That is the man. He said I should not sell to butchers that owe money. At the time that I agreed with Hirshon or at the time that I made the payments, nothing was said about what the money was paid for. I asked once Sam Lipkin and he said it is for the association; that is all he told me. I do not know what the association did with that money.

[fol. 352] The following testimony was given by the said witness at this trial:

Cross-examination.

By Mr. Kaufman:

The witness: I had trouble with the union twice, once when my chauffeurs were not members of the union, and

a second time when I did not pay the union chauffeurs the union scale of wages. That is the only trouble I ever had. The first one lasted about a week. The second time it lasted eight weeks. In October I had some difficulty because I didn't have union chauffeurs. That trouble lasted a week, and during that week I went to West Washington Market and the commission men sold me poultry but the union men would not load my trucks. After that one week, I got poultry, all the poultry I wanted, and there was no difficulty of any kind. Then later on, I had trouble but it wasn't the point of the union. I have nothing to do with the union, the point was the money and when I gave the money they loaded the stuff. That was in 1927, and that trouble lasted about a week. Since that time I have not had any other difficulty. No one asked me for any collections or to make any payments of money since that time. Since this one week's trouble I had in 1927, I have been able to purchase my poultry wherever I wanted to and never had any trouble of any kind.

Cross-examination.

By Mr. Kroppy:

The Witness: I don't know of any other marketmen that have had any trouble in buying poultry in 1927, or of any trouble since then that retailers have had in buying poultry from marketmen, and as far as I know, the marketmen and [fol. 353] all the other men who were defendants in the criminal case which was tried in 1929, have not caused anybody any trouble in the buying or selling of poultry in New York City.

Mr. Kroppy: I make a motion at this time to strike out his testimony on all the grounds previously made, as to the testimony of all the other witnesses.

The Court: Denied.

Mr. Kroppy: Exception.

Redirect examination.

By Mr. Rice:

The Witness: I had trouble for about a week in October, 1927. After that I had eight weeks' strike again, around 1928 or the early part of 1929, it was around there. In the

latter part of 1928 and the first part of 1929, if I had the men I would be able to load, but I didn't take the union men. My boy, he went down to West Washington market. The men at the receivers' stalls, wouldn't load let him load the stuff. I tried all over. They wouldn't load it. He tried once and he did not go any more. I made a statement in the office of the United States Attorney, in the summer of 1928. And at that time I learned that the United States was investigating. Immediately after that time I was able to get poultry. Before that time I had trouble. Then the union men would not load me in West Washington market, but it wasn't the union men interested in this here. Because I did not pay Dave Hirshon at that time, is why I couldn't get the stuff. He was a market man in Brownsville. He did not make collections. Sam Lipkin and Carl Firestone made the collections from me. I paid it a couple of times and then I refused. When I refused to pay, I couldn't get the stuff.

[fol. 354] I had some difficulty in May, 1931. I had two shochets, so I laid off one shochet, and one man he did not want to kill for butchers. I couldn't sell to butchers any more. Nobody told me not to sell to butchers, but the shochets wouldn't kill for any butcher or poultry dealers, only for women who came and bought the poultry for meals. I had to stop doing wholesale business at that time entirely. Prior to May, 1931, I had been selling wholesale, and sold to every one that come in the place. The shochet said he wouldn't kill for the butcher. Only for the women. That is all. At that time I was getting poultry in West Washington Market. I was getting it all over.

This year there was no trouble at all in buying poultry. The shochet did not kill stuff, that it all. About three months that way he did not kill stuff for butchers. The Rabbi would not kill in the place for the people, but West Washington Market sold me anything I wanted. In May, 1931, the shochet did not want to say who told him not to kill for butchers and retail dealers. He says "I don't want to kill," that is all. He said some one from his office gave him orders not to kill and he did not kill. He did not say it was Joe Rosenman, and he did not say it was Kalman Shapiro.

Cross-examination.

By Mr. Perlman

The Witness: Up to May, 1931, I conducted what is called a union market. I agreed to the scale of wages and the conditions of employment that the Shochtim Union had arranged with all the marketmen, and I knew the rules. There are wholesale markets and retail markets. The wholesale market sells to the butcher and the retailer, and the retail [fol. 355] market sells only to the consumer. The scale of wages for the shochet in the wholesale market was $65 a week and in the retail market $45 a week. The shochet who gets $45 a week under the union rules and the agreement made with the market men, kills only when the sale is made to the housewife, and under the rules of the union, the $45 a week shochet does not kill chickens sold to butchers. When the market man wants to sell to butchers he must have a shochet who gets $65 a week. That was so in May, 1931. The wage that I paid my shochet in 1931, was $45 a week. I had notified the union that I was going to conduct only a retail market, and that meant that I would not sell to the butcher. The union sent me a shochet at $45 a week who was supposed to kill only when I sold to the householder.

When I had this trouble in 1931, I had this retail market shochet in my place and butchers came in to buy, and wanted this shochet to kill for them. This shochet said he was only there to kill chickens sold to the householder, and then he refused to kill the chickens that were being sold in my market to the butchers. That was in accordance with the rules and agreement that were made by me with the union. That was the whole trouble. If I had had a shochet at $65 a week, I could do a wholesale business and sell to the butchers.

By Mr. Rice:

Prior to May, 1931, I was doing a wholesale business, and it was only because the shochet told me that he wouldn't kill for butchers and retail dealers that I stopped doing a wholesale business, but I had a $45 a week shochet.

My market was in the area covered by the Brownsville group of market men. In 1927 and 1928, I was told to em-

[fol. 356] ploy two shochtim and two men by the union. I did employ two shochtim and two men all the time. During the year 1928, I did not let some of my men or shochtim go. I kept two men and two shochets all through 1928, and 1929. I do not know that in 1927 and 1928, when market men stopped making payments to the Brownsville Association they were required to take four men and two shochtim of the two unions; they never tried it on me.

Cross-examination.

By Mr. Perlman:

The Witness: In May, 1931, when I decided to conduct only a retail market, up to that time, I had two shochtim. Then I told the union I would run a retail market with only one shochet, and the union then let me discharge one of the shochtim, and the other one was to get only $45 a week. The union agreed to that. They didn't insist on my having two shochtim, only one shochet. I remember the two men that I had before, each worked a week at a time at $45 a week. The union sent in the two men, but each one worked a week, so that each one got about $22.50 a week, as they worked two weeks every month, at $45 a week.

[fol. 357] David Hirshon, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a wholesale poultry market man in Brownsville. I was a director of the Chamber of Commerce in 1928 or 1927. It might have been 1927, 1928 and part of 1929. I don't remember. Another director of the Chamber of Commerce representing Brownsville, I think, was Morris Gordon in the fall of 1929. I was a defendant in the criminal prosecution. I was convicted and sentenced to four months and $2500 fine. I didn't plead guilty. I was tried and convicted, and I never made a statement to the Government prior to the criminal case.

I attended the meetings of the Board of Directors of the Chamber of Commerce, maybe once every week or maybe once every two weeks.

I don't know whether Louis Weidberg was present at the meetings, maybe yes and maybe no. Who can remember three or four years ago; I can't remember all that. I did not see him make collections on the East Side. I think he paid some money to Ben Simon, because he used to tell me. I don't know how much, maybe three or four or two-fifty, something like that, but not any seven or eight hundred dollars. Just after Simon was made supervisor and attended the board meetings—I don't think I was on the board at that time. I was made a member of the board maybe eight or nine months later. At one time I was president of the Chamber of Commerce. My duties as president were sometimes to call a meeting, or if they had any argument with the union labor to straighten out, if I could do something for them, I done it.

[fol. 358] At one time, an arrangement was made in the board of directors' meeting of the Chamber of Commerce, whereby collections should be made from each one of the various districts of New York City, but not of one cent a pound. We didn't need any cent a pound. I don't remember the amount that was to be collected. The Bronx, Harlem, East Side, Brooklyn, Brownsville, and Borough Park were six districts into which the Chamber of Commerce was divided. I don't know what they did in the Bronx, or in Harlem. I know what they did in Brownsville, my own district. At those meetings of the board of directors, it was not stated by the various market — present that the Bronx was supposed to pay 22½ per cent; Harlem was supposed to pay ten per cent; East Side 16½ per cent; Brooklyn 16 per cent; Brownsville 17½ per cent; and Borough Park 18½ per cent. That was never brought up by the board of directors meetings.

I never collected any money. Morris Gordon, Jacob Koslow and I think Samuel Lipkin, collected in Brownsville. Jacob Koslow and Morris Gordon were market men, and Samuel Lipkin was a bookkeeper, but I don't know for whom he was working at that time. Carl Firestone did not make any of the collections. They never had anything to do with us. I didn't appoint the collectors for Browns-

ville. I never heard Benjamin Simon appoint them. If he did it, he did it privately.

They made regular collections from the market men in 1927 and 1928 all over Brownsville. Not everybody gave money. The man that could afford to pay paid. Maybe in the entire Borough was collected about $1400 or $1500 a week, sometimes maybe $1600 or $1700 a week.

[fol. 359] Louis Spatz and Sam Goldstein collected from the Bronx. I don't know whether Max Wolas or Jacob Reisner collected in Harlem. Willie Simon and Louis Cohen collected in Harlem. Louis Weidberg and Charlie Merotznik collected from the East Side. Samuel Sahn collected in Williamsburg. In Coney Island it was Sam Gold. That is all I know.

I saw all of these people make payments to the Benjamin Simon in the Chamber of Commerce but not all the time. Sometimes William Simon and Sam Gold and Louis Weidberg gave money to me to give to Benjamin Simon. They didn't say anything except to give that to Benjamin Simon.

Benjamin Simon told me he wanted this money to pay people downtown but what he meant by downtown I don't know. He never mentioned the District Attorney's office, or the State Attorney General. None of the defendants mentioned payments to the State Attorney General's office. I didn't tell people that these payments were being made to buy off the District Attorney's office and the Government. I told them we have got to have so much a week to pay to Ben Simon. I didn't tell these collectors anything. I had no charge of that. They didn't turn over money to me. They used to collect about $1,400 or $1,500 or $1,600 a week, and all I used to get was about $350 out of that money to give to Ben Simon.

I was a member of the Chamber of Commerce at the time that Benjamin Simon became supervisor. At one of the first meetings, he said he wanted $5,000 a week. He didn't tell me for what. He said he had to see people downtown. He didn't outline any proposal or anything. He said that [fol. 360] is what he has got to have. At that time nothing was said about customers.

At a prior meeting, something was said about protecting customers of the market men, each one will have his own customers. That was all that was said. I couldn't remember who said it. I don't believe that even the Chamber

of Commerce had anything to do with that. Each borough had to do with them by itself.

Benjamin Simon said that we market men should go out and divide up the customers in our respective boroughs. He said at the Chamber of Commerce meetings, "You men go out and get together, and each one hold your customer and you can make a dollar". He didn't divide anything, or say to divide up customers. He did not say that to the board of directors. He said, Let us say, to a man like Morris Gordon or maybe to a fellow like me, when we came up there and asked what do you want money for, "Well, if you want to make a dollar, you have got to have some money to pay people downtown. You can all keep your customers and try to raise the price a cent or two, so you will make a living. He didn't say raise the price six or seven cents. All I charged was five cents a pound. How could I raise seven cents?

It was part of the plan that we should pay $5,000 to Benjamin Simon, and if we paid $5,000 to Benjamin Simon, then each one of the boroughs could organize, that is the market men in each one of the boroughs could organize, and divide up customers amongst ourselves, and no market man would be permitted to sell to the customers of another market man. If a person used to come in with cash we would sell him. If he did not come in with cash, you did not sell him. I didn't agree to that. I do it today, too. If [fol. 361] I don't like a person, I don't sell without cash. We didn't agree to anything. That was only said in our own borough, not in the Chamber of Commerce. I don't know what was said in other boroughs.

The first meeting of market men in Brownsville after I had discussed this with Benjamin Simon was at Grabel's Hall, about July, 1927. All market men from Brownsville were there. Maybe a couple of them were missing. I think. I think Jacob Koslow, Morris Gordon and I called the meeting after Benjamin Simon became supervisor. There were present as I recall Morris Gordon, Mack Harnett, Louis Sorkin, Abe Franzel, Philip Garber, Meyer Auster, Morris L. Hellman, Abraham Kleinman, Jacob Koslow, Louis Merotznik, Jacob Mintz, I. Kaplan, Harry Rubin, I. Resnick, Morris Fishman, Barney Aswolinsky, Bennie Danziger, Isidore Blumenfeld, and I. Joseph Rosenman, Secretary of the Shochtim was not there. He was not a market man.

Neither was Joseph Weiner there. He isn't a market man.

Morris Gordon said we should go home and do our best and find out how much poultry Brownsville sells. A week after that, we should go home and each market man should bring back with him a list of his customers and see what we can do. We sold a week's business; Brownsville sells about 450 or 500 thousand pounds of poultry a week. Every market man said let us all bring lists of customers. Some did bring lists of customers, and some do not. Each one was asked if they were satisfied, the way they got the business. Each one remained the way they were, and some of them said they could not make a living with the amount they have got. When they said that, we didn't give them more customers; we gave them money. If two market men [fol. 362] claimed one customer, they straightened it out amongst themselves. If they could not straighten out amongst themselves, they did what they pleased, both sold them. That was done. I had customers that used to buy from me today, and then they bought from somebody else. We did not divide up the customers. If we wouldn't treat them right, then we couldn't keep them, no matter whether they liked it or not. If he could not buy in Brownsville, he went into Brooklyn, and if he could not get in Brooklyn, he went to Borough Park, he was never left without poultry. Anybody was able to get poultry in 1927. I should say they got, because in my place one holiday I sold them poultry for three cents a pound. I tried to get a half of a cent more for the holiday, and I told my customers because I have double expenses for holiday, they left me boycott and left me standing with 135 coops of poultry and they had the poultry; they were not closed, and I was stuck with my poultry.

Benjamin Simon demanded $5,000 a week, and a part of that from Brownsville. That doesn't mean to say a cent a pound. A cent a pound would mean maybe $50,000 a week. The collectors in the various districts were to collect a certain amount of money; as a part of that plan we tried to make customers in Brownsville buy only from one market, if we could do it. I don't know about other districts, I wasn't there, and I am not interested in what they did. All of the market men in Brownsville agreed they would sell only to their customers; we couldn't hold them to that.

Charles Herbert did not get part of that $5,000 per week paid to Benjamin Simon. He never got any of the money. [fol. 363] If there was money to be gotten, Ben Simon would tell me he was giving to Arthur Herbert.

At these first meetings in Brownsville, it was agreed that each market man was to pay so much money to the collectors. Not all the market men should pay, I want you to understand that. Some of the market men were to receive money. The big market man who did the wholesale business was to pay that money, and the small market man was to receive money. When the retailers received money, they should not do wholesale. They agreed they would not sell wholesale, provided they received so much money a week. Some got $125 or $150, some got $200. From the $1,500 or $1,600, they used to pay so much away and the balance went to Ben Simon. About 6 or 7 of the market men received money, and don't forget every week and every month, they used to change around; sometimes the big fellow went down, so small he was getting. The fellow who did a lot of business, he paid out. There were 30 or 35 market men in Brownsville. Some of them didn't give and some didn't take anything; they done what they pleased. Most all of them were either paying or receiving money. Maybe only about ten or twelve were paying.

B. Taits paid money for one week, $50. Then he refused to pay. He sued Benjamin Simon, Arthur Herbert, myself and others. I didn't tell him anything. What the other market men in Brownsville told him, I don't know; I never was in the man's place. I know he had a strike; whether it was around that time, I wouldn't say yes or not. Whether he had a strike of both his shochtim and members of Local 167 makes no difference. If the man goes out, the shochtim is no good, and if the shochtim go out, the men are no good, and you cannot do without either [fol. 364] one. The ones that struck in B. Taits' place of business were members of Local 167, I think. I didn't tell Arthur Herbert and Charles Herbert or Benjamin Simon that B. Taits had stopped paying money. I had nothing to do with that. I didn't tell anybody. Maybe Morris Gordon had something to do with him. I never went into that place. He told me that Taits is not paying. I said, who cares. I don't know whether Morris Gordon told

Charles or Arthur Herbert. Benjamin Simon knew he didn't pay. Somebody must have told him.

A. Weinstein did not pay anything, and did not receive any money. Blumenfeld and Dworkin paid $25 or $35 a week, maybe $50. Abe Franzel of the Howard Live Poultry Co. paid maybe $250 or $300 a week. He was selling maybe 50 or 60 thousand pounds of poultry a week. He was not paying one cent a pound; nobody paid a cent a pound. We didn't need so much money. Garber and Oster paid $100 or $75 a week; maybe $150. Morris Gordon paid $150 or $200 a week, maybe, or more, but less some weeks, maybe $300 sometimes. Abraham Kleinman received $150 a week, I think. He didn't do enough wholesale, therefore he received $150 a week. Jacob Koslow paid maybe $100, or *or* less, I don't know. Louis Merotznik paid $50, if I ain't mistaken, maybe $100. Jacob Mintz paid maybe $200 or $250. I don't know whether he paid $350 a week. He sold 50,000 or 60,000 pounds a week. The total amount sold in Brownsville was about 500,000 pounds [fol. 365] a week. Prospect Live Poultry, Charles Bistretsky's concern paid about $100, maybe more, maybe less. Harry Rubin, I think, paid $50 or better. I am not sure if he paid as much as $100 a week. I don't believe Dave Hasenfratz ever paid. Samuel Kadin paid $50. Frisman and Aswolinsky for a short while paid maybe $75. Sorkin Brothers did not pay. I don't know of any other payments. You have got them all, except with the few retailers.

Most of the retailers received money. Mack Harnett received $200 a week. I don't take his customers; I never speak to the man in my life. I had my own trade. I didn't take any customers and didn't give any. Mack Harnett had a dispute as to whether certain customers belonged to him or someone else, but not in my presence. They did that privately.

I don't remember who was on the committee that decided who should have customers. I think Morris Gordon was on that committee, I am not sure. I was on no committees.

[fol. 366] Direct examination.

By Mr. Rice (continued):

The Witness: I know William Simon, a market man in Harlem. He was one of the members of the board of di-

rectors of the Chamber in the summer of 1927. He asked if I didn't want to belong to the Chamber of Commerce, I told him that I am not doing enough business to belong to anything. He said to me "You will make a living as good as somebody else". I said "Show me how. If you will convince me", I says, "then I will belong to it". I says "With all the poultry I sell I couldn't make a living." He says "Well, don't worry about your place, you will make a living". I says, "All right". He says "I will be getting $500". I want you to understand once for all that one borough had nothing to do with another borough, they couldn't tell me what I could do and what I could not do. He said "Don't worry, you will make a living". I says "How". He says "You will get $500". I wasn't interested how I was going to get it. He did not say the Chamber of Commerce will pay me $500. The Chamber of Commerce had nothing to do with that. He had nothing to do about what we are going to do with our poultry. He says "Why don't you belong to it, it is going to be a payable business". I said "I can't see it, if you will convince me how, then I will belong to it". That is the time he convinced me by saying I will get $500 a week. I am telling you that has nothing to do with our customers, what he did I wasn't interested. All I was interested in was to get the $500 a week. I was not interested if my customers left me and went over to the Harlem district. We couldn't [fol. 367] stop them anyhow, they went anyhow, because the customer wouldn't listen to us. The unions had nothing to do with these customers.

I made the following statement to Mr. Oseas: "William Simon said to me 'why should you be so foolish, I tell you we will make a living'. All of a sudden there became a strike between the union and the marketmen and we did not load any poultry for about four, five, six or seven days." Our contract ran out with the labor union and they submitted a new contract and they want something like a $5 raise and we refused to give it to them and the marketmen went up to the Chamber of Commerce and had a meeting that we should stop loading until the union comes to terms with us, and that was the only reason that we stopped loading. We didn't load any poultry at West Washington Market because we couldn't get any more. Our contract ran out. We couldn't get any under any circumstances.

That was after I joined. That must have been around the first of the year, January or so. I don't remember the year. I am not an educated man that I kept the years in my head. I knew they had a strike. That was before Benjamin Simon came into the business. He wanted $5,000 a week, and said each borough should contribute so much per week. He didn't tell us anything. It wasn't his worry how much we collected, all that worried him was he should get what he wanted. He wanted $5,000 a week and we told him we couldn't give it to him. Later on we agreed that we would give him $2,000. He got $5,000 one week, that was the first week he started. He never told me he got the $5,000. Only I heard from Morris Gordon or somebody he [fol. 368] got the $5,000, I don't know whether he got it or not, I am not sure.

The new Shochtim Union was organized in 1927. Charles Herbert and Joe Weiner are now the delegates of the Shochtim Union. I don't remember who put them in as del-ates. *Maybe Benjamin Simon did.* I don't know. I wasn't there. The delegate of the Shochtim Union before Charles Herbert and Joe Weiner were made delegates, was a man by the name of Walsh, something like that. I don't believe I spoke to him once. I don't know the other man. I don't know if there were two. I think the Shochtim that I employed joined the new union when Charles Herbert and Joe Weiner became the delegates. I know they are union men; I wasn't interested how they joined or what they joined. Who can remember what was three years ago. You think that is all I got to worry, is about the Shochtims, I am worrying how I can get a living.

I couldn't tell you whether Benjamin Simon had any control over the new Shochtim union. I don't know whether Benjamin Simon was the big boss of the Shochtim Union or whether he gave orders to the new Shochtim union, I couldn't tell you that, or to Charles Herbert or Joe Weiner.

What marketmen in Brownsville made the arrangements whereby the Brownsville marketmen paid the small marketmen sums of money per week, I couldn't remember. I didn't. Gordon may have. I can't tell you for sure.

I never had any dealings with Harnett. Maybe Morris Gordon did. All I know, I was getting money. Who made the deal with them, I don't know. Samuel Lipkin and

Morris Gordon collected the money. They used to give [fol. 369] me what was Benjamin Simon's share, $350, something like that, whatever came out as their share. I never handled any more money. Sometimes they brought it themselves there.

There wasn't any meeting which decided they should pay $300 a week on 30,000 pounds. First it was checked how much poultry is sold and they figured up how much they needed to pay out, that is, how much they collected and they made a price that everybody was satisfied. It had to correspond with the paying out and collecting just as much. Nobody kept anything. For the first week, they divided the $5,000 on a percentage basis, at a Chamber of Commerce meeting. What percentage Brownsville was to pay of the $5,000, I don't remember. I don't even know how they got the $5,000, to tell you the truth, I know I didn't pay*ing* anything to it. I never collected any money and I told you that I wouldn't or didn't atte*nd*-. All I was interested was to get what Benjamin Simon was entitled to get and that is what I took. If they gave it to me, I took it. If they didn't give it to me, I told them I didn't get it.

At the time that Benjamin Simon got $5,000 for one week from the various boroughs, I was receiving $150 a week. I got one week $500. That was from Willie Simon and Louis Cohen and not from Ben Simon. They brought it to me in the market. Willie Simon and Louis Cohen were doing business in Harlem. I don't know who paid the money. The payment was made, because I couldn't make a living. I didn't do much business, I couldn't cover my expense. I gave them nothing. I told them it didn't pay me to go into the deal because I am not making a living. [fol. 370] No one told me and I did not tell anybody that if I paid money to my association, I could raise the price on poultry and make up for it several times. I was not told that by Benjamin Simon. I wouldn't swear to it, but I don't believe he ever told me that. I didn't go back to the borough meeting and tell all the market men that they could do what they pleased, whatever they agreed among themselves, nobody was bossing. Benjamin Simon used to get $2,000 a week. I never paid anything. He used to take what I got. I told you, about $400, or $350, maybe $420, something like that, a week.

The collections in Brownsville continued about a year or so, and payments to the small market men continued during that same period. No one got any money for making the collection in Brownsville. Morris Gordon got $500 a week. At that time Benjamin Simon wasn't there.

At that time $1,600 was paid to Eddie Bloomstein. This was about two weeks before Benjamin Simon came in. We paid to Eddie Bloomstein for two weeks, and then we started paying to Benjamin Simon. After he came in the office, I don't know how long it was, we paid to Eddie Bloomstein about 14 or 15 hundred dollars a week. From Brownsville, I don't know what he was supposed to get. I think he was a commission man. He wasn't in the Chamber of Commerce office. The payments were made to him in West Washington Market, on the street.

Morris Gordon and Louis Cohen and a couple of men from Brownsville gave me the money and they said "Take this over there", and I brought it to Bloomstein and he took it without saying anything. I don't think that at that time the customers had been divided in Brownsville. I don't remember that. At the time I made those payments [fol. 371] of fifteen or sixteen hundred dollars to Eddie Bloomstein for two weeks, I was taking off my $500 per week. I was told I could have $500 of that money by Louis Cohen and William Simon.

I have seen Charles Herbert or Arthur Herbert in the presence of Eddie Bloomstein, in the street maybe. When I go down there I don't watch whether they talk or they don't. I did not see Eddie Bloomstein talk to either Arthur or Charles Herbert during the time that I was making the payments. He never let anybody see the time when I gave it to him. He took it on the street. I don't believe Eddie Bloomstein had a great deal of influence with Local 167 and the Shochtim Union at that time. If Tootsie Herbert could put another man on, he would put another man on. That is the kind of influence you would have with them. They did not tell me what became of that money. Nobody ever told me. I don't know that either Arthur or Charles Herbert were getting any of that money. They never got a nickel. They tried to get $5 a day more for the men, so why should I give money to them yet. I could not tell you whether Eddie Bloomstein at that time was collecting

from one of the boroughs. Benjamin Simon was never present when I paid the payments to Eddie Bloomstein. Simon didn't belong at that time yet.

When I stopped handing money over to Eddie Bloomstein, I started handing money over to Benjamin Simon. After Benjamin Simon became Supervisor, I got $150 a week salary, for a year as president. I talked to Arthur Herbert and Charles Herbert during that time. Sometimes. I deny that I told them to stop loading poultry for [fol. 372] particular market men. Every market man that wasn't loading, every man that was ever stopped from loading poultry was on account he did not have no union man, he wasn't loaded. If it was me or somebody else, if he had union men, they loaded that is all. I never violated the rules. I always got the same man, even now. I didn't have any strikes because I complied with the union rules. A man that has got one union man and three colored men to work for him, then, of course, we pick on them. If I got union men, I want the next man to have union men.

Gordon gave the payment direct to Benjamin Simon sometimes. I never told Benjamin Simon, Arthur Herbert or Charles Herbert, who wasn't paying money. I never told him anything. What did they have to do with those. I never sent any messages or telephoned to either of them, what marketmen were not paying. The only time I called the union was on a holiday, I would ask them "Until what time is the men going to work the next day", and nothing else.

Q. Do you know who it was that kept the union informed or kept Arthur Herbert or Charles Herbert informed as to what market men were not adhering to the conspiracy?

A. I don't know, I wasn't interested in it.

Mr. Perlman: There has not been a bit of evidence here that any one ever complaint to the union of the failure of a market man to make payments. There is not a bit of evidence and I object to it.

The Court: Overruled.

Mr. Kaufman: I object to it on the same grounds.

The Court: Asking the question is no proof, but I am permitting this man to be examined, as an adverse witness. Overruled.

Mr. Perlman: Exception.

[fol. 373] The Witness: I couldn't tell you who kept Arthur and Charlie Herbert informed as to what market men were not behaving themselves, because any man that did it, and if he did that, he would not let me hear that.

Louis Spatz never showed me a paper indicating how much he had collected from the Bronx, and I don't remember his telling me.

I complained to Benjamin Simon after the customers had been divided up that I was not getting enough business; "What can I do," he says. He did not help me out any. I think he said something about letting me grab a few customers. I am not sure. I don't remember Benjamin Simon saying anything about letting me take a few customers from other market men. I don't know whether at that time I took some customers who had been purchasing poultry from Taits and from miscellaneous other market men in Brownsville; I don't know; maybe I did; maybe I didn't. I don't know to whom the customers belong. We never took the track of it. I didn't take care of it.

Whether Philip and Meyer Oster ever refused to make payment to the collectors, I didn't know, I didn't collect I told you. I did not report to the Chamber of Commerce or to Benjamin Simon that Meyer Oster would not pay. The Chamber of Commerce had nothing to do with that. I did not report that to Arthur or Charles Herbert. What have they go- to do with that. I accompanied Benjamin Simon to the office of the State Attorney General. That was the time when they started to make that exchange office. He said after we came out, "Everything is all right". I said, "What is all right". He says "All ~~right~~". I suppose he wanted to convince me that he had influence with the Attorney General's office. He did not tell me that he was making payments to that office. He never told me [fol. 374] to whom he gave m*eony*, never mentioned anybody's name. He said "Come on along with me". I went along with him. He went into a room. He came out and he said "Everything is O. K." At the time that Benjamin Simon went up to that office, he went into a private office himself. There was some one else in there. I did not see who it was. I was sitting outside.

I don't remember whether B. Taits closed up his market in 1927 or 1928. He kept close a couple of weeks because it didn't pay him to do business, because we paid

him money. He said "I don't do enough business and if you want to buy out my business, I will sell you my business." I think he got three or four hundred dollars a week. His customers went wherever they pleased. Benjamin Simon had nothing to do with the payments being made to Taits. I never said anything to Benjamin Simon about collections. He had nothing to do with that. I never complained to Benjamin Simon that Taits didn't want to pay enough money. Benjamin Simon did not say anything to me about straightening out the difficulties with Taits. I don't remember that Benjamin Simon was made a co-defendant along with me in a suit brought by B. Taits. I didn't pay anything to B. Taits after the suit was settled. The Chamber of Commerce never paid anything to B. Taits. They paid in my presence. It is hard for me to remember who was there. I think Morris Gordon, Benjamin Simon and Louis Spatz were there at the time we settled with B. Taits. Benjamin Simon did not pay the money to B. Taits. Some of the market men paid it. I wasn't interested how the money was gotten, where it was gotten and I didn't pay a nickel. Ben Simon couldn't pay a nickel out of the Chamber of Commerce office because every nickel [fol. 375] was taken care of and everything was paid by check.

Mack Harnett never paid a nickel. He always collected. I didn't pay him anything. The Brownsville market men paid his father $200 or $250 a week. I suppose he promised not to sell wholesale, I don't know, I didn't have any dealings with him; I didn't make no bargain with him. I don't know that they were caught selling strange butchers. I didn't have any dealings with them and I wasn't interested. I don't know that that Harnett could not purchase poultry in West Washington Market for some period of time.

At the time Mack Harnett was trying to get poultry in West Washington Market, I went to Ben Simon and said that someone would get killed yet for all of this trouble. I said it was going around too much trouble. I said, What is it? He said "I don't know." I says, "You don't know?" he says, "I don't know". I said somebody was going to get killed in this game. When I said game I was not referring to dividing up customers. What has customers got to do with that. I saw Philip Harnett up in the office and he hollered to Ben Simon, and he says "What

is the matter I don't get poultry?" Simon said, "Maybe you got trouble with the union. Have you got union men?" I don't know if he had union men, if he had union men he got poultry. This is no question. I suppose he had no union men, so he didn't get poultry, I don't know. I didn't tell Benjamin Simon on that occasion that I was afraid. I said I was sick and tired of that business of being together with the market men and dividing up customers and collecting money. And I told Benjamin Simon that I wanted to get away, because I didn't make a living anyhow. [fol. 376] I told him "This thing is liable to lead me yet to jail". Benjamin Simon said "Nothing will happen to you. Don't be yellow", something like that. I asked him to break it up. He told me "Don't be yellow, nothing will be done". I said "I don't want to have that business. People coming up and hollering. If anybody has something out of order, they are bringing the blame on me. They say "If you are the president, you can get me poultry". I said "What have I got to do with this?"

Somebody told me Harnett had a fire. I didn't say anything to Benjamin Simon about it, but at nine o'clock I think, I see a private citizen with Harnett or his mother, they came into my place of business and said to me, "Hirshon, you are the president, you ought to know who made the fire." I said "If you will do me a favor, you can get out of my place, I don't know about fires. I think it was one of the sons. I was the president, and he said I ought to know who started the fire. I said "I am president maybe I can tell you who robbed the United States". I said, "What do I know about fires?" So they walked out of my place.

I don't remember that Mack Harnett had a strike at his place of business at this time, maybe he did, I think he did. I think the shochtim with the men were on strike. I don't know if he had men. I did not call a board of directors' meeting after Harnett had a fire in his place. Why should they have meetings on Harnett or from somebody else? He wasn't so very important that we should call meetings for him. Benjamin Simon did not tell me that he had to pay Joe Weiner $50 a week. He never wanted a nickel for them kind of fellows from our Chamber of Commerce. We don't like them to give them any money yet. Simon did say something about given Weiner, a chicken dealer, $50 a week.

[fol. 377] Direct examination continued:

The Witness: During the Jewish Holidays in the Fall of 1927, Benjamin Simon did not ask that the amount of contributions to him from the various boroughs be doubled. At that time the boroughs were not paying $4,000 or $5,000 per week to Benjamin Simon. The amount at that time was not raised to $8,000 or $10,000 per week. Benjamin Simon did not say anything about needing double or more money for the holidays, nothing whatever. I never said that Benjamin Simon said he wanted double, and that he wanted $10,000. I don't remember that during the Jewish holidays in 1927, I had a meeting with Morris Gordon, Harry Rubin, Jacob Mintz, Abe Franzel and Isaac Kaplan, and several of the other market men. I had no controversy with B. Taits about that time. I did not take any of his customers. If I could get them why not. Somebody got them. Do you think I followed up customers and found out where they went to? If they came in I sold them.

I had a conversation with Benjamin Simon about breaking up the Chamber of Commerce. I don't remember the day or the year. He said he didn't want to. He didn't mention any protection. He never told me he was going down to Washington and fix it up, or that he was going to see Ottinger. He didn't tell me from where the man comes. He said that was one of his friends that went to Europe. He never mentioned names. He never told the names. He says a friend of mine went to Europe, and he will come back and everything will be all right. He didn't say no straightening out with this man and he didn't say no fixing it. He didn't say who he is. He never said he was a public official or a lawyer. I am telling Ben Simon break [fol. 378] this thing up. It is no good. He says to me "What are you worrying? My friend went to Europe, and when he comes back everything will be all right". So what more can I tell you? I never seen the man. I don't know even if he had a friend that went to Europe. I believed it.

When the settlement with B. Taits was made, Morris Gordon was there, Louis Spatz and I were there. At the time the settlement was made, nothing was said. I didn't even interfere in any settlement. I don't know what kind of settlement they made with him before. Everything was ready. I don't know how much they paid him. I know he

got money. I didn't give him any money. I don't know who paid the money. I think there were some notes. I think three or four of us signed the notes. Benjamin Simon, Samuel Sahn, Louis Spatz and I. I am not sure, I think it was $2,500. I don't know to whom it was payable. It was handed, I think, to a counsellor or somebody. I know it was not handed to B. Taits. I don't know how much was paid in addition to this $2,500 note. Louis Spatz did not give me any money to give to B. Taits, or his attorney, at this conference. I did not make out a check for $5,000 and receive in return for it $5,000 in cash. I don't know that $950 was ultimately paid in cash by Louis Spatz. They gave him money, but I don't know how much, because I didn't pay anything towards it, I wasn't interested to know.

I told Ben Simon to break up the Chamber of Commerce when he told me about the man going to Europe. I says, because we ain't making a living anyhow; about getting killed, I didn't say it.

I recall that Harnett had a fire in his market, but I don't [fol. 379] remember the year or whether it was after the settlement with B. Taits. I don't know what happened there. I was never told. I think Benjamin Simon offered a reward for any information as to who had set that fire, but I am not sure.

I know Ida Frank, a market woman, in the Bronx. She and I. Frank are husband and wife. I don't know that they both run the market. I don't know that Ida Frank refused to pay money to the collectors in the Bronx in 1928. I didn't belong in the Bronx. I asked Benjamin Simon why the unions took their men out of Ida Frank's market. He says "I don't know". I said "What is the reason?" He said "I don't know myself". We asked the delegate, Arthur Herbert. We sent for him. He said he had some trouble with the union labor and that is all and that finished up, he said he had nothing to do with the union. I don't know that at that time Ida Frank refused to make payment. The union had nothing to do about paying and about taking off men. I wasn't interested if Ida Frank paid or if she did not pay. The only time a man had trouble was when he had trouble with the men, not about money, what have they got to do with the union men. She was once up in the office of Benjamin Simon, once or twice, I am not

sure. They talked by themselves in a private room. I asked him what Ida Frank wanted and he told me she had some trouble with the men. He did not tell me Ida Frank had refused to make payments. I said "What is the reason with them?" And we sent for Arthur Herbert and we talked it over with him and he said she had some trouble with the men about overtime. Ida Frank runs a market in the Bronx and I run a market way over in Brownsville. I had to do with straightening out trouble in markets, [fol. 380] because I was from the organization. I wanted to see that everything was all right. She came in and she hollered she wants to talk to the president, she wants to see what is the matter with the union. She said "You are getting $150 a week for what? For nothing?" I think that was my duty to ask her. Louis Spatz never told me that Ida Frank stopped paying $350 a week. I don't think I went to Ida Frank's market with anybody to look at her books. I don't remember that. Maybe I went with Samuel Sahn to Ida Frank's market. Maybe I didn't, I can't remember that. I don't remember whether Ida Frank ever showed me her books. Who can remember? That was three years ago. Who can remember with books. What have I got to look in her books for? Benjamin Simon never told me that if Ida Frank refused to pay they pulled the men out. I asked Benjamin Simon what is the matter with Ida Frank's men. He said "I don't know". I said "Why not call up the delegate and find out what is the matter?" We asked him please to come up and he told us something was the matter with the men, maybe she laid off the men, maybe it was the overtime, I don't know what it was but I knew she had trouble with the men. The Chamber of Commerce did not pay Ida Frank $1,000 at that time. I never paid outside money, only to those that work in the office. I don't know whether Benjamin Simon paid any money. Maybe the directors of the Chamber of Commerce paid her money. What I remember, I am telling you. What I can't remember I am not telling you. I don't know how much Ida Frank was paying to the collectors at that time. I couldn't tell you if she paid $200 or $2, that was Louis Spatz' business. He did not tell me what she was paying. It was none of my business what [fol. 381] she was paying him, what he was supposed to get, what he got and what he didn't get was none of my

business. I don't recall when the United States Government commenced investigating the poultry industry, whether in 1928 or 1929. I don't know whether at that time we were collecting the money in Brownsville. I was never collecting. I don't know, when it began. So long as the association began, they were collecting. It lasted all of the time I was president. I don't know if it lasted some time in addition to that. After I got out of the office, I wasn't interested any more. I don't remember when my term of office as president commenced. You got every paper and you got every book from the Chamber of Commerce and you ought to know. I don't think that at the time of the trial we were still collecting money. Whether at the time of the grand jury investigation we were collecting money, I don't remember, and I don't think so. I wouldn't say yes and I wouldn't say no. I don't know if it was after or before, I don't know whether any Government investigators were going around the poultry markets at the time that we were making the collection. I don't know, they were never in my place.

I know Jacob Bloom. He is a commission man. I know a Bloom who is in the Shochtim union. I don't know his first name. I never heard it. I don't know if he was ever one of the leaders or officers of the Shochtim Union. In 1927 and 1928, I did not make any payments to Bloom, and I don't know that any one ever made payments to Bloom. The Chamber of Commerce never paid any money, only to people that was employed. I don't know that he was receiving money from Benjamin Simon, or from the union. I know Morris Gordon. I don't know whether Morris Gordon was paying Bloom $100 a week. I don't remember, I never asked him. Maybe some one told me that Morris Gordon was paying Bloom $100 or some other sum of [fol. 382] money. I don't remember that, I don't know. You are asking me a thing that I can't think of it yesterday. I didn't tell Mr. Oseas that Bloom was getting $100 a week from Morris Gordon because he was the leader of the Shochtim Union. I never said it.

I know Kalman Shapiro. He was president of the Shochtim union, but I don't know what year. I think he was president at the time we were making the collections in Brownsville. I don't know if he was being paid any money, by any one. I never told Mr. Oseas that I saw

Kalman Shapiro get paid money. I did not see Morris Gordon pay Kalman Shapiro money. If I did see him, then I would tell you whether he got paid. I don't remember Morris Gordon ever telling me that he gave Kalman Shapiro money. It is impossible for me to remember what happened three years ago. Maybe he did, maybe he didn't, but I don't think so. But I never said it. I don't know that Kalman Shapiro was getting some of the money collected from marketmen.

I know Benjamin Danziger. He was in B. Taits' market, I don't know in what year, but it was at the time they were making the collections. I never said that if Danziger paid one cent a pound he would not have to take on any more union men. I never spoke to that man in my life while he was in the association. Benjamin Simon never told me the marketmen who paid one cent a pound would not have any union trouble. I did not send Benjamin Danziger up to see Benny Simon. And I did not tell him that if he wanted to know anything, to go to see Ben Simon, he was the Boss. I never spoke to him. I never told that to Sorkin, Danziger's partner. I never spoke to that man either. I don't remember telling Benjamin Simon to talk [fol. 383] to Arthur Herbert about Benjamin Danziger's trouble. What have I got to do with it. I remember B. Taits had a strike, but I don't know that he was given union men who wouldn't do any work for him, in place of those who were taken out. Benjamin Simon never said in my presence that B. Tait would have to employ the union men who were sent to him or anything of that sort. I don't think he had anything to do with men. B. Tait was paid $400 a week one time. To keep his business closed, he sold out. I don't remember when that was, and I don't know who paid him. I think it was Morris Gordon or somebody from Brownsville. I don't know that collections were so made in some of the boroughs up to the time of the trial in the criminal case. I told you before, so long as I was president there were collections made. After that I don't know. I paid to the collectors, but I don't think I paid after I ceased being president.

I know Abraham Goldberg. He was a chicken dealer in Brownsville. He was able to purchase poultry in 1927 and 1928. He had poultry. I don't know that he was unable to purchase poultry.

I know Morris Hellman. I don't think he was paying money to the collectors in Brownsville. I wouldn't say sure, but I don't think so. That man does a small business. I don't think he refused to sell to butchers and retail poultry dealers not allocated to him. Maybe yes, maybe no. I wasn't interested in what he did.

The marketmen in Brownsville when they first started agreed that they wouldn't sell to any customers who were not assigned to them, but we never kept it. After, everybody took customers as they pleased. I know that on information filed against the defendants, but I don't remember the years and the dates. I don't remember when [fol. 384] the government started its first suit. Whether at that time we were still collecting money in Brownsville, I don't remember. For any other boroughs, don't ask me, I wasn't interested.

Benjamin Simon used to say he was going to Washington, but who knows where he went to. When he came back, he says everything is all right. He had nothing to do with customers, I told you. He didn't worry if collections of the money were all right. I think at that time he went to Washington, but maybe he went some place else. I didn't see him but somebody said they seen him but not in Washington. I can't remember who said that because he never went there. Therefore, I am telling you the same like the man in Europe. Benjamin Simon told me at the time I made payments to him that the men whom he had to pay were downstairs. That is all he said, I never checked up on him to see if the men were waiting downstairs. I don't know whom he made payments to. I wish I did know. I don't know that he made payments to some retail dealers.

I know a man by the name of Weiner, a chicken dealer in the Bronx. I couldn't tell you if he is one of the leaders among the chicken dealers. I am not interested in the Bronx. I know him because he was a market man at one time, otherwise I wouldn't know him. Benjamin Simon said he gave $50 to Weiner. For what, I don't know. I never seen him give it to him. If he gave him or not, I don't know. Benjamin Simon did not say that Weiner used to smooth things down at the chicken dealers' meetings.

I know Carl Firestone. He used to work for me. I suppose he is a member of Local 167. I don't know if he was

[fol. 385] hired at the time these collections were made, by Morris Gordon, to go around and check up on the markets. That wasn't my affair. I don't know that Morris Gordon paid him money. I don't think so. Morris Gordon never told me he did. Firestone was paid money by Jacob Koslow, but not Carl Firestone. Samuel Lipkin was paid by Morris Gordon, because he was a bookkeeper. Lipkin collected money in Brownsville, sometimes. Morris Gordon used to tell me. I don't know. He was paid I think $100 a week or something like that. I don't remember. By Morris Gordon. I suppose that money came out of the collections in Brownsville. I don't think that Carl Firestone was ever paid any money out of collections in Brownsville. Jacob Koslow and Samuel Lipkin were paid out of the moneys collected, but I never mentioned Carl Firestone. Jacob Koslow was paid, I think, $100 or $125 a week, because he did the same like Samuel Lipkin. He collected from the market men in Brownsville. I don't know who paid him.

I know Julius, Sidney and Murray Rosenstein, all by sight because I see them down in the market. I don't know where they worked in 1927 and 1928. They never were in Brownsville. What do I know if they were paid out of the moneys collected in Williamsburg and Borough Park? I had no business there.

I know Barney Heckt. He is a market man. He told me that he wanted to change his shochtim. I told him I had nothing to say over that, and to see Charlie Herbert. I don't remember if I talked to Charlie Herbert or not, maybe I did, maybe I didn't, but I don't think so.

I know Hyman Nierenberg, a market man on the East Side. He was paid money for his promise not to do a [fol. 386] wholesale business. I couldn't tell you how much. I don't know that his customers were bought out by Abraham Wolff. I don't know what was done in the different boroughs. He never told us who paid him. He said he was getting paid to give up his entire business. He gave up his slaughterhouse and he went to kill somewhere else. He did retail business after that.

I saw William Roth of Newark, New Jersey, at West Washington Market. He came up in the office. Benny Simon was there, and I think Willie Simon. He claimed he came down the market and he couldn't get any poultry.

And we told him "What is it our business"? Ben Simon asked him "Why, what is the matter?" He says he can't get any poultry, and he says "What do you want me to do? You want me I should go and get it for you?" I says, "I suppose you ain't got no union men so you can't get no poultry". Otherwise, everybody gets poultry. Without union men, he says, you can't get no poultry. He says "What do you want from me?" He says "You live in Newark, why do you ask me why you can't get poultry".

I don't remember anyone at that time telling William Roth that he would have to stop underselling in Newark. We answered him in short words. We told him we have nothing to do with union labor. If you ain't got the poultry I suppose you ain't go no union shochet. I did not know at that time that William Roth was a large marketman in Newark and that he was selling under the prices of the New York market. That was the first time I ever seen him. It was never called to my attention. I don't know what they did in Newark, whether they were combined or not combined, I wasn't interested. All I was [fol. 387] worrying about was Brownsville. I don't know that they split the profits among themselves at that time in Newark. You are asking me things what is doing in Newark just the same as you are asking me what is doing on the other side. We did not tell any shipper not to sell to William Roth, and I don't know whether anyone ever told any shipper not to sell to William Roth. I did not know that William Roth was importing poultry by carloads from shippers at that time. The only time I knew that William Roth was unable to purchase poultry at West Washington Market was that day. After that I never seen the man. I don't know if he got poultry that day or if he didn't, I don't know whether William Simon helped him to buy poultry secretly, and whether William Roth was told that he would have to charge the same amount that the other marketmen charged in Newark. I don't know. I did not offer to make any compromise with William Roth. I have nothing to offer, I didn't belong then. Whether William Simon and Benjamin Simon offered him a settlement, I don't know, I wasn't there, I wasn't interested. What have I got to do with Newark?

Joe Usim was not on the payroll of the Chamber of Commerce. Whether he was on the payroll of the union on

the East Side or was paid money out of the collections made at Coney Island, I don't know.

I did not accompany Arthur Herbert to Philadelphia. I have been in Philadelphia. I have never talked to Alfred Levitt. I know Max Levitt and Alfred Levitt. They come to West Washington Market and bought poultry once over there. I did not tell Alfred and Max Levitt not to sell poultry to Newark marketmen. I was only there one time. Maybe Arthur Herbert was there but I wasn't with him. Maybe he was standing alongside of one of the stores [fol. 388] when I was buying the poultry. I wouldn't swear yes or not.

The marketmen in Brownsville never charged one price. I never agreed to charge five or six or seven cents per pound. I sold for as much as I could get. No marketmen ever agreed in my presence that they would raise the price. I don't know if they talked about charging more so that they could make more profits. I charged my price. I attended the meetings in Grable's Hall, but we didn't talk about prices.

Cross-examination.

By Mr. Kroppy:

I am a defendant in this case. All these things about which I have testified as having taken place in 1927 and 1928 when I was president of the Chamber of Commerce and when we had these meetings over at Brownsville, were stopped more than two years ago. I think it was right after I quit being president of the Chamber of Commerce. I am not sure, maybe a month more. I know it is about two and half or three years, maybe, and since that time I haven't heard of any meetings by marketmen in Brownsville or anywhere else. I haven't heard of any marketmen refusing to sell poultry to anybody. We are glad to get the customers. Sometimes I have heard of poultry being refused at West Washington Market or at the railroad terminals since that time. A man may come in with a non-union man who would positively not get poultry, me or anybody else.

Mr. Kroppy: Same motion to strike out this witness' testimony.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 389] MORRIS TEITLER, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

(The following testimony, given at a trial in October, 1929, by the witness was read in evidence, by stipulation, subject to objection and exception as to its competency and materiality:)

Direct examination:

The Witness: I am a butcher and poultry dealer. I was in business for myself but not now. I was for fourteen years in business in Brooklyn. It was in July, 1928, when I went out of business. I bought poultry in June, 1928, from Mamber & Pepper. I remember on or about the 28th of June, 1928, I had a conversation with Pepper. We were dealing together for the last ten years, and they used to charge me five cents above the market. And then there came a time when he charged 10 cents above the market. I told him I could not afford to pay it and he said I could go any place else. I told him a couple of times "I will go", so he said "Go ahead; I ain't stopping you." I went to different places. I was going to Rockaway, and I got stuck. It was five cents a pound cheaper than I paid him.

The first time I went away to get poultry was Thursday morning, June 28th. I brought the poultry back to my store. I put up a sign and advertised my poultry for 36 cents. Mamber & Pepper were charging 39 cents a pound. I had paid for the poultry by going to Rockaway, 29 cents. I put out the sign and so Harry Herbert came in and he told me I should take the sign out of the window. So I told him I couldn't take the sign out because I had stuff to sell; this is a market place, and if I would not put the [fol. 390] sign out nobody will come in. He said "It is not nice for us you should keep the sign in the window; nobody got a sign in the window". I said "I got to sell my stuff". So he walked out. He walked away and then came in one by the name of A. Miller. He told me the same thing. So I told him I can't take the sign out. He was one of the agents of the poultry dealers. He said I should take the sign out of the window. That I should not sell stuff that way. I said I would not take the sign, that I got stuff here and I got to sell it. He did not say anything; so he walked away. So they came there, they returned with

a car, Sidney Rosenstein and Dave Kaufman. Those were the two people, told me to take the sign out of the window. They didn't say anything where they were from. So I says, "I cannot take the sign out of the window, because I got stuff to sell and I am going to keep the sign in the window". So one of them says, "You had better take the sign out of the window, because I am going to blow your brains out". He told me "if you are a wise guy take it out of the window". I said I would not take it out; so they started to give me a bawling out and then they left. Then they came back and one had some car outside, it was Sidney Rosenstein, and then Kaufman passed with a cab and they looked in the window and went away. I did not see them until the next day.

The next morning they came back and asked me why I did not go back to Pepper to buy stuff. I said that it was my money in there and he charged me too big a price and I cannot sell the stuff that he gives me because I cannot charge more. He says, "It is all right, he will give you for a lower price". So I says "I do not need stuff now", that was Friday, "and I cannot get this any more". He says [fol. 391] "All right, go on". I says "I am not going back for there is no use going, I can get stuff cheaper". One of the fellows said "Don't be a wise guy and go and kill your own stuff". I says "I won't go back to kill there; I will get my stuff somewheres else". So Sidney Rosenstein said "You are a wise guy, and we are going to blow your brains and see whether you will go back". I says, all right. So then, Kaufman says in a nice way "Is that your car?" I says, "No". So he says, "You better go back to Pepper and kill the stuff, otherwise we are going to blow your brains out". I said "Go ahead and do that". So they went away. So I went back to the store. During the conversations my wife was standing right near.

I went over to the car and as soon as I opened the hood I seen it was stuffed up, where the oil goes in, with black stuff like sand, so I went over to the corner and called over the cop from the beat, and they took the stuff out and I cannot start her any more. She could not pull any more. When the detective picked up two fellows and took them down to the station house they asked me if they pay the damage—that is two guys they were at the store, and so

they went away. I went back to the store, and they came back, the same men, Sammy Sahn and A. Miller. There were also A. Miller and Joseph Rosen. When they came in, four of them, they asked me how much damage was on the car. That was about a week later. So I says I was down by the Packard people and they gave me an estimate of about $280. So I says, "If you want to pay $280 all right, then it is up to me". So Sammy Sahn takes from his pocket $200 and says "Here is $200, and if you want to take it all right, and if not, you will get nothing". [fol. 392] So I did not take the money and they went away. I did not have any further conversation with any of the defendants about it. This conversation took place in my place of business. I had a conversation at the place of business of Mamber & Pepper about it. Pepper called me down, sent over one of his men and he took me down to his place. I went upstairs and he told me if I will get $280 if I will not press the charge against the fellows. I says "If they pay me I will not press any charge against them". And he said, all right. Meanwhile, the others had come—I says, "I am going home; if you want to see me come over to my place." So one week, they came, Sam Mamber and Sam Sahn and A. Miller and Joe Rosen, they came in, the four of them. My wife was present during this time when they came in. That was the second time she was present. I was in the place of business of Mamber & Pepper after the car was injured; was in the washroom of that place of business. I saw standing a can with black stuff in there and I saw it was the same stuff that was in my car. They came there and they told me how much they done damage $280; Sam Sahn says "I am not going to give you any $280". I told them I would not take any less, and I am not going to lose $80. He says "Do you want to take $200, and if you would not take $200, all right". I said, all right, I would not take anything, and they went out.

Cross-examination:

The Witness: This occurred June 29th, 1928, and I had been buying from Mamber & Pepper. This is Williamsburgh, Brooklyn. He advanced the price of chickens to me, and I complained about it. I told him I would go some-

where else and he said go anywhere you want to and buy your chickens. He was perfectly willing I should do it. He invited me to do it. I did go to Rockaway and buy, and [fol. 393] I got chickens for 29 cents. He was selling for 39 cents. I paid 29 cents and sold for 36. I was is the retail business. The market price was at that time 24 cents. I was paying five cents more at Rockaway.

I had a sign in my window that I was selling for 36 cents and a number of people came down and protested about my displaying that sign. Among those was A. Miller. He was general manager of the Butchers' Association. I was not a member at that time.

That day I claim the machine was damaged there were two men. One of them asked me if the car in front of my place was my car and I said "No." So they went away around the corner. They knew my car but they made believe that they did not know which my car was. That was all that was said about the car, and later on, after my wife had gone down to look at the car, I went on down and found something that looked like sand in the engine, and then later on, in the washroom of Mamber's market, there was an oil can with black sand. I went into court about it and I testified. They were discharged.

It isn't a fact that I asked Sam Sahn to come over to my place to see me and that I told him that if he gave me $300 I would not press these charges, and he told me to go to hell. I never saw Sam Sahn.

I was a member on the 29th of June of the Retail Poultry Association. Mr. Rosen was vice-president of it. A. Miller, about whom I have testified, was general manager. He was one of the men that came in and complained about my exhibiting this sign. I didn't have any trouble with them. The one I bought from in Rockaway I do not know. He did not want to give me any credit. I [fol. 394] paid him in cash. This association of which Mr. Rosen was vice president did not have any rules or regulations about prices that we were to charge. There was no prices made. The exact date that I bought this poultry at Rockaway was June 29th. The market price was 25 or 24 cents that day. I bought fowl for 29 cents. During this period chicken dealers charged various prices for their poultry. I did not see anybody do anything to my car. All I saw was when I went down, I saw something that

looked like sand in the washroom up at that market. That is all I know about the car.

I was making a seven cent profit. I was buying and selling dead chickens. There is no shrinkage on dead chickens. I could not go any more to Rockaway because I couldn't go any more with the car.

[fol. 395] MORRIS TEITLER testified at this trial as follows:

Cross-examination.

By Mr. Kroppy:

The Witness: I am a butcher. I sell live chickens to housewives and consumers since 1927. I buy my poultry from marketmen in Brooklyn. I haven't had any trouble in buying poultry since the Fall of 1928, and have been able to buy poultry wherever I pleased since 1928, without any interference by marketmen or by any of the union men. I do not know of any marketmen having refused to sell any other retailer in Brooklyn, or anywhere in New York. I do not know of any threats that marketmen or union men have made to retailers or anybody else in regard to the selling or buying of poultry.

[fol. 396] ANNA TEITLER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

(The following testimony of Anna Teitler, *was* given at a trial in October, 1929, was read in evidence pursuant to same stipulation, subject to objection and exception as to competency and materiality:)

Direct examination:

The Witness: I am the wife of the man who just testified. I was in my husband's place of business on the 28th day of June, 1928. My husband went ahead and got poultry somewheres else and when he came back he put a sign in the window selling his stuff for much less than anybody around there. In a little while Harry Herbert came in the

store and he told him to please take off that sign, not to cause any fuss or arguments around here, and my husband told him he had killed enough stuff and has to get rid of it and he has to keep that sign up, so he told him to please take it off and he went away, so Mr. Miller came and he asked the same thing and he told him he has to keep the sign up. Then Dave and Sidney Rosenstein came around in the car and called my husband over and told him to take the sign out of the window. I walked right out and he told him he could not take off the sign because he had to sell his stuff, so they told him if you won't do it in a nice way they will blow his brains out. So they started to threaten him and went away. The next morning they came around again and told him to take the sign off. He said he wouldn't do it, he had to sell his stuff off. They said, if you don't do it they will blow his brains out, and not be a wise guy. They said "Go back to Mamber & Pepper". Then they [fol. 397] rode away. My husband said "you see what they are going to do, because they asked if that was my car". So I went around the corner and their car was drawn up next to ours and they had the hood open and was pouring this stuff into the car. I memorized the number of the car and put it down with pencil and paper and ran around and told my husband.

When I wrote the number down my husband ran right over there and he got this cop to take this stuff out. I also saw what was in the car after I ran back; some kind of black stuff. It was in the oil gauge, I believe, where they pour the oil in. I was in my husband's place of business when some of the defendants came around to speak to him thereafter. It must have been about a week after. Sam Sahn, Sam Mamber and Mr. Miller and Joe Rosen came. Sam Sahn wanted to square it with him and he asked him what the cost of the car was. My husband had got an estimate. It was $280, and he told him about it, so he took out $200 and tried to give it to him. My husband refused to take it and wanted $280. He said "If you don't take that you don't get anything". So he didn't get anything. Nothing was said about $300 at that time.

Cross-examination.

By Mr. Sager:

I know about the charges that were brought against these two men for damaging that car. They were brought into the court in Brooklyn.

Cross-examination.

By Mr. Kauffman:

My husband had Dave Kaufman and Sidney Rosenstein arrested. And there was a trial in the Magistrates' Court in Brooklyn. I personally saw them putting this black stuff in my car. My husband called a cop. I had never seen these men before. I saw them come into the store those two days. Rosen has a store right across the way from our store. We were both selling the same kind of product [fol. 398] at retail.

Mr. Kroppy: I make a motion to strike out the testimony of these two witnesses on all the grounds previously urged as to the testimony of like character introduced yesterday.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 399] Anna Teitler testified at this trial as follows:

Cross-examination.

By Mr. Kroppy:

The witness: I am the wife of Morris Teitler. I heard the testimony of my husband just gave. You are asking him now whether he is having any trouble. At this time he is not in business any more. He went out of business towards the end of 1928. He is working for another butcher. I have had nothing to do with the poultry business since the Fall of 1928, the time I had trouble with them. I am at home now, so I do not hear anything I have not been anywhere else. I have been right in my own home.

Cross-examination.

By Mr. Kaufman:

That trouble I had was in the end of June, 1928. That was the only time I had any trouble. And since that time I did not have any trouble.

[fol. 400] LILLY HOROWITZ, a witness called on behalf of the Government, being first duly sworn, testified as follows:

The following testimony of the witness was given at a former trial in October, 1929, and was read in evidence pursuant to stipulation, subject to objection and exception as to competency and materiality:

Direct examination:

The Witness: I had a business. Now I have no business. I was in dead poultry business in June, 1927, in Brooklyn. I bought poultry in June, 1927, from Charlie and Izzy Kaplan. They took from me 40 and 43, two cents more than the market. I did not have any conversation with any of them as to the prices that they were to charge me when I first started to buy there. They promised to sell me two cents above the market. They charged me two cents above the market about four months. Then they charged me four cents. I cannot tell you exactly when it was, maybe four or five months after I first started to buy there at two cents. I said to them "Why do you charge me now four and heretofore two cents." They *they* said "Now me have a corporation, we will have to charge you more money". Charles and Izzy told me that. I spoke to them and cried to them. I asked them to reduce the price and they said it couldn't be done. Sometimes they charged me five over the market and sometimes six. They told me to charge 43 or 48 or whatever price I could get. When they said 43 or 48 the market quotation at that time was 29. This conversation was after the Passover holidays of 1928. They all told that to me; they were all together. I had a conversation with Jake Koslow sometime in the summer of 1928. He said "A penny I have got to have for that gang". He gave me the names. I can't re-[fol. 401] call the names of all of them. Totsie and his brother and others, and I cannot tell the names.

When people in the Prospect Market spoke to me about the corporation, they did not use any other word besides corporation. They just said corporation. After the Prospect Poultry Market raised my price from two to four cents above market, I went to Taits. I had chickens slaughtered with Dworkin & Blumenfeld many times. I went to them after the corporation was formed. They did not sell to me. Dworkin said he would like to give it to me, but since it is a corporation he cannot give it to me. Then I

went back to the Prospect and I spoke to Charley. He said "Now you are in my hands, I can take from you as much as I want". I don't know how much he took. He took as much as he wanted. I paid, I didn't know what to do, I couldn't go anywheres else. I was not able to sell. I lost my money and I went out of the business. I have been out of the business from that time one. One of the owners of the Prospect on the 16th of May, 1928, went by my market and he cursed me. That was Charley Bistretsky.

Cross-examination:

The Witness: At the time that the market price of poultry was 29 cents a pound I was paying five or six cents in excess of that. I was not able to sell it. I was able to sell it for 25 or 30 cents the highest. Because it was bad goods, I couldn't sell it. When live poultry was quoted in the market at 29 cents a pound, I was selling slaughtered poultry at 25 cents a pound. I couldn't help it, I had bad merchandise. I bought it, but since I am with the Prospect they never let me hold a chicken in my hand. They would not let me handle a dead chicken.

[fol. 402] In all other markets I did handle chicken, but in that market I did not. I went out of business because they gave me bad merchandise and I did not have money to pay the rent. I went out in August, 1928. When I went out of business, and at the times I have been testifying about, I owed the Prospect Poultry Company a bill for an unpaid balance. I don't know how much, they could have written as much as they wanted. I did not owe Sahn $770. I don't owe him anything. They charge we five cents more a pound in the Prospect Market and I took that off from the money that I owed him. On the merchandise that I bought from Sahn I was charged five cents more a pound than for the merchandise I bought in Prospect. I went back to Sahn and told him he was charging five cents more and that I would take off the five cents, and I therefore don't owe them anything. I don't owe Dworkin & Blumenfeld anything.

Cross-examination.

By Mr. Kaufman:

The Witness: I was here last year during the summer, and gave a report. I talked to Benjamin Bernhardt; he

isn't here. I saw Harry Herbert before in Prospect Place Market. I saw him when there was a strike in Garber's on the block. That was last summer, 1928. I never saw them before that. I saw them in the market when I came in to have some poultry slaughtered, and I started to cry, they were giving me bad poultry, and I was told to keep quiet. "Do you not see who is sitting here"? Charley said that. That was the only time I saw those two men, no more. I never spoke to them. I went to buy from Koslow, but he wouldn't sell me. No one wanted to sell me. I saw him only once. I went to see him when Taits closed his market. I asked him for merchandise and he said he doesn't want [fol. 403] to give me, and I told him that I am giving him money that he should give me merchandise, but he didn't want to. That was the only time I ever spoke to him. I asked Koslow for merchandise and Koslow said he wouldn't sell it to me. Nothing was said about collecting a cent a pound for the gang. Hirshon told that to me, not Koslow. Charley told it to me also. I saw Hirshon only once.

I went to him to ask for merchandise and he did not want to give me. I said to him "I will give you money, give me merchandise". He said "I do not want to sell you any merchandise". I said to him "Do you want another penny? I will give it to you". He said, "We have enough pennies, we collect enough". That is all, and I went out of the market. When he told me about the gang that was during the time I stood there, and cried at him "Give me merchandise", and he wouldn't give me. That was about the time that Taits closed his market. I don't remember the month. That was the time I was dealing at the Prospect Poultry Company. At that time I did not owe the Prospect Poultry Company even a penny; I paid them my bills. I didn't go back to the Prospect Poultry Company. They treated me badly, but later, I had to go back.

As soon as Taits opened his market he asked all dealers to come to him, so I also went to him. So I was doing business with both the Prospect and the Taits at the same time. Taits sold it cheaper, that it why we went to him. When he was opened I went over to him and later when he closed I went back to the Prospect. He gave only what he had; he couldn't make any better. He was only there a short time. Koslow's place of business was over in the same neighborhood.

[fol. 404] Mr. Kroppy: I make the same motion that I made as to the testimony of the other two witnesses.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 405] Lillian Horowitz testified at this trial as follows:

Cross-examination.

By Mr. Kaufman:

The Witness: I went out of business when I had the trouble. I went out, I worked for somebody else in the chicken business. I have been out of business for over three years, so I don't know anything about it now.

[fol. 406] David Scott, a witness called on behalf of the Government, being first duly sworn, testified as follows:

(The following testimony, given by this witness at a former trial in October, 1929, was read in evidence, by stipulation, subject to objection and exception as to its competency and materiality:)

Direct examination:

The Witness: I am in the poultry business in Brooklyn for five years and over. Between the fall of 1927 and the summer of 1928, the most stuff I used to buy in Louis Gold, the Clarkson Poultry Market. During that time I tried other places. I went in the Early Poultry Market and I slaughtered there on Wednesday morning and Thursday morning. Morris Brown (identified in the courtroom) and the rest of the fellows were there. I don't know their second names. I used to call them by their first names. Thursday morning I had my poultry down there. Couple of hours later I had a call from a shochet. He called me on the telephone, he said "Mr. Scott, don't come to slaughter here any more".

Then I went to Mr. Sam Sahn. I heard that he was president of Brooklyn Borough. Once I find him in the market, I said "Mr. Sam Sahn, please do me a favor, and move me from Louis Gold". He didn't give me a clear answer, didn't say yes or not, but he smiled. Then one time I came

to him, and I made an appointment that I should go back again to the Irving Poultry Company and I came to the Irving Poultry Company on Saturday to arrange that I should get my poultry, for Saturday night. One by the name of Louis—I don't know the second name, but he is [fol. 407] a partner in the Irving Poultry Company, he said he don't know anything. I said I made the arrangement with Mr. Sam Sahn, and finally he said "Call me up in a quarter of an hour and I will let you know." Finally I called up and he told me to come down and I will get my stuff. I come Saturday night and the shochet refused to slaughter the stuff. There was two shochtim but one shochet refused to slaughter stuff for me. I went over to the main boss, and said "Mr. Brown, you are the boss?" He said "No, the shochtim are the bosses". I said, "While I am here, Mr. Brown, they are slaughtering your orders, 200 heads out of 240 heads, and went me in 40 heads." He said "I am not the boss". Finally I went home and a neighbor of mine slaughtered for me that night that I should not have to shut my doors.

Then I find a place by the name of Salthe in the Bronx. It is a good distance to travel from Gates Avenue, Brooklyn, to 149th Street, Bronx. I slaughtered by Salthe. Then Mr. Sam Brown and Mr. Phillip Boperofsky took me in their car and they told me they got plenty of trouble from me, let's come to a settlement. They said "Where do you want to slaughter?" I said "It is immaterial to me, the only thing is take me from Louis Gold". I used to pay heavy money for what they called express stuff. Finally, Mr. Sam Brown said "Where do you want to go?" "Philip Boperofsky is a landsman of mine" I said, "I will go to Phillip Boperofsky." The next morning I went ahead to Phillip Boperofsky. I paid good money and I didn't get what I want. Then I heard on the street they were moving me back again to Mr. Louis Gold. Just ten days before Easter, Louis Gold's bookkeeper got me and told me "Mr. [fol. 408] Scott, you will have to come anyway back to us; come with a good will". I said I will come tomorrow to slaughter, because I didn't have nothing to lose. Then I went back to Louis Gold. He gave me a good deal for Easter, a couple of days back to Easter, and then he gave me such stuff that I did not know what I was doing. I got nervous that time and I am nervous yet. Then finally I

slaughtered around. I used to slaughter by Benny Kaplan, Freeman, and Myrtle Avenue. I saw Mr. Brown there a couple of times with Phillip Boperofsky. They didn't do anything bad about hurting or something like that, but the way I said before they did to me bad. They hurt my feelings. Whatever they did, I could not get my stuff.

I tried to get poultry in the Irving Poultry Company but could not get it. I was by Mr. Sam Sahn. He didn't offer me. I don't know what prices I was paying Louis Gold at this time for my poultry. I didn't have a record at that time. Everything was express stuff. I know one day I paid about 16 or 18 cents a pound more than I paid by Mr. Kaplan, and by Mr. Kaplan I had better stuff than I had by Louis Gold.

Cross-examination.

By Mr. Jacobson:

The Witness: After I had been dealing with Louis Gold for a while I went to see Sam Sahn. I had never bought any goods from Sam Sahn before that. It was about the Pass-over Holiday of 1928. I saw him a couple of times before the holidays. I stated before that I slaughtered a week before the holiday by Louis Gold. I don't remember Mr. Sahn telling me to wait until the holidays were over and then I could pick out anybody I want. After the holidays I picked out the firm I wanted to deal with. I dealt with that firm just a short while. I didn't ask Sahn to sell me [fol. 409] any goods but I asked him to remove me from Louis Gold.

The following testimony was given at this trial:

Cross-examination.

By Mr. Kroppy:

The Witness: I am still a retail poultry dealer at the same address. I had trouble all the time in 1928 in buying poultry. Before the criminal trial in 1929, we had trouble. With the union, I didn't have any trouble, because I don't come to the union. I am retail, and I slaughter, you know in the markets. Before they were associated, I didn't have no trouble. I could go anywheres I wanted, but when they got associated, before they were convicted, I had plenty of

trouble. I don't remember the dates, but before the trial I had plenty of trouble and after the trials we didn't have any trouble again. That is sure. The trouble continued until the trial. After the trial, we didn't have any trouble. Well, lately they start back again a little.

A couple of weeks ago, before it was in the papers that the charge of taking out an injunction, and as far as I know, I had a little trouble. I come in several markets. They didn't refuse exactly to give me stuff, but they asked me as a favor not to come to them. And now it has stopped again. That poultry business goes like a wheel, up and down.

Mr. Kroppy: I move to strike out the last statement, if your Honor please.

The Court: Overruled.

Mr. Kroppy: Exception.

The Court: It is fairly responsive to your question.

[fol. 410] The Witness: I didn't have any trouble, but some time they run short in one market, and when I go into the next market they give me a little stuff, and said, "Please don't come around here again". You know, as a favor, because I am plenty acquainted in Brooklyn with the market men, and nowadays I could go anywheres again. The fact is that I have been buying poultry from one market man all the time. When he was short I went to another market man, who sold me poultry but asked me as a favor not to trade with him any more. That is all that happened. I have heard of no market man refusing to sell other retailers poultry. I have heard of no other retailer having trouble in buying poultry, and I have not heard of any other trouble at all in the poultry business.

Redirect examination.

By Mr. Rice:

About that trouble I had two weeks ago, I came into the market, and they said, as a friend we will give you a little stuff. The market is the Johnson Avenue market in Williamsburg where I have my store. The proprietors are three, but the inside man is Charlie; I don't know the second name. I don't know the names of the other proprietors. I have been buying poultry from this Johnson Avenue Market before my visit two weeks ago, once in a

while when my market, the Beadle Street Market, didn't have stuff. There are three partners; one is Harry Herbert, brother of Arthur Herbert, Abe Rosenberg, and Dave —whose second name I don't know. I buy there for, I think about over a year's time. I used to go over often to Johnson Avenue Market, when the Beadle Street Market didn't have to suit me. I don't know whether the proprietors of the Beadle Market prevented me from buying at the Johnson Avenue Market. None of the defendants in this case told me that Harry Herbert or any of the other proprietors [fol. 411] of the Beadle Street had stopped me. They didn't mention any name at all. Charlie, one of the other partners there, told me—Mr. Scott, you are a friend of mine. I will give you that little stuff, but don't tell anybody where you purchased this poultry, and keep away.

I bought my poultry very little by the same Bennie Kaplan, since I am in business.

Q. Did Bennie Kaplan sell you?

A. A couple of weeks ago Bennie Kaplan was not in the place, but the shochet and the working men asked me the same favor as that Charlie, not to bother them. Of course, Bennie Kaplan was not in, I couldn't say anything. I tell him "I will do you that favor", and I went back to my Beadle Street market, you know, where I slaughter. I called aside Abe Rosenberg, he is the inside man, and I told him what is doing plain, you know. I went out and I told him what is doing, you know, pretty well, I go by Bennie Kaplan pretty often——

Mr. Perlman: Just a minute. Is Rosenberg a defendant?
Mr. Rice: No.
Mr. Perlman: I object to it.
The Court: Overruled.
Mr. Perlman: I except.

Q. Go ahead and continue what you were saying.

The Witness: And I said to Abe, they are stopping me off getting stuff back again. He says, "No, Mr. Scott, I don't know anything". I says, "You know very well, and if you will start up, you know, I was not lazy in that corporation to go to Salthe and anywhere else, then I should know.

Q. Repeat that. I do not think we understand that.

A. I went over back again to the Beadle Street, and I told the inside man, he should not stop me off from getting stuff from Bennie Kaplan.

Q. That is you told Abe Rosenberg?

A. Yes, because by Bennie Kaplan, I slaughtered stuff before he had ever been in business. He says, "I didn't stop him off to give you stuff", and I had with him, you know, a small argument, and I didn't say up to Bennie Kaplan for a good while, you know for a couple of weeks, [fol. 412] until you start, you know, in the papers, that it was out in the matter of injunction, and now I am getting back again by Bennie Kaplan all I want.

Q. That is when you read in the papers——

Mr. Perlman: Just a moment. I move to strike out all the testimony with reference to any conversation had with Rosenberg or what he read in the newspapers about it.

The Court: Denied.

Mr. Perlman: Exception.

The Court: As to the conversation, it will not be considered as evidence, the declaration by a third person, unless other proof in the case should bring Rosenberg into a conspiracy. If that other proof be made, then a declaration by him pursuant to the conspiracy or in furtherance of it, is just as much evidence against co-conspirators when he is not a party to the suit, as when he is a party to the suit; but in the event of the failure of the proof in that respect, namely, to bring Rosenberg in to the conspiracy, then the testimony will be by me disregarded and not given weight.

Mr. Perlman: Does your Honor permit into the record the statement of the witness? It certainly was irresponsive, that after he read in the newspapers about the injunction suit he got merchandise.

The Court: Yes, I will take that incident merely as fixing a date or tending to fix a date merely.

Mr. Perlman: Tending to fix a date of when he had this conversation with Rosenberg?

The Court: Yes, or the fact that there was change in the practice after there was a newspaper announcement of an injunction suit in connection with this matter.

Mr. Perlman: I respectfully except.

Mr. Kroppy: I object to it on the ground that there is no conspiracy here shown which would include Mr. Rosenberg, and therefore any testimony he gives is inadmissible

at this time. I understand the rule to be, before any declarations are admissible in evidence by individuals so it will be binding on the other defendants, the conspiracy, including the declarant, must first be proved, and that has not been done in this case. I am objecting to anything further.

[fol. 413] Q. Tell us some more about that conversation that you had with Abe Rosenberg?

A. There isn't any more to say. I said what I was talking with him, you know, a couple of words, and that is what he answered me; he didn't answer me back.

Q. He didn't what?

A. He didn't say anything back.

The Witness: I did not talk with Harry Herbert at the time. I did not attempt to buy poultry from any other market man in Williamsburg, just by that Bennie Kaplan, and in that Johnson Avenue. I didn't go any further. After this incident I have been buying my poultry from the Beadle Street Market, regularly. I used to pay three, and now since they start up back again, they raised me a cent a pound.

Mr. Perlman: He said now that they started again. Surely we are not bound by his conclusion on that. That is the part I object to and move to strike out.

The Court Overruled. Denied.

Mr. Perlman I except.

Q. When did the Beadle Street Market start charging you one cent more per pound?

A. They said clearly they are getting organized, and they want to have a cent more, and I——

Q. Who said that?

A. In Beadle Street Live Poultry.

Q. Who in Beadle Street?

A. The bosses there, I think Abe Rosenberg.

Q. Did Harry Herbert say anything about that?

A. No.

Q. Was he present when Abe Herbert said that?

A. I don't think so; no.

Q. Who did Abe Rosenberg say was getting organized?

A. Who did he say what?

Q. Yes. Who did he say was getting organized?

A. He told me it would cost me a cent more on the pound, and I didn't protest on it, because I know from before, I will have to pay.

[fol. 414] Mr. Perlman: I move to strike out what he thought; what he knew.

The Court: Overruled. I will take it.

Mr. Perlman: Exception.

The Court: I am not going to hold him down to expressing himself as you and I would.

Mr. Perlman: Surely this witness is volunteering a lot of thoughts and knowledge not based on evidence here. It is hard to be bound *it* it.

Q. What else did he say; tell us everything.

A. He did not say a thing, but he raised immediately a cent and that was all.

Q. Now you tell us, Mr. Scott, just what Abe Rosenberg said about charging one cent a pound more?

A. He said from today on, instant, to say, four or five weeks ago, from today on costs you four cents more. That means a cent more than you paid. And then there is another thing, there is the spring roosters.

Q. Yes.

A. To say right—they are roosters—already I never paid more than two or three cents above, and now I pay five cents above, and I have got to pay it.

Q. Did Abe Rosenberg say anything about that?

A. He didn't say anything, but they put it on the ticket and we have to pay. I am a good payer and I pay my bills promptly.

Q. Did he say anything about the market men being organized?

A. I think he did.

Q. You think he did?

A. Yes, sir.

Q. Just what did he say about that, that is what I am interested in.

The Court: So far as you can remember. Your best recollection of what he said.

A. I couldn't exactly say it, but more sure, he said we are getting organized and it costs you a cent more.

Q. And did he say the market men were getting organized?

A. I don't know exactly.

Q. Well, did he say who was getting organized?

A. I don't remember that point.

Q. He just said we are getting organized?

A. I don't remember exactly that point.

Q. Did Harry Herbert say anything?

A. No, with Harry Herbert I never talk about business, just hello and goodbye when I see him some morning, be-
[fol. 415] cause the inside man is that Abe Rosenberg and he sells.

Q. By inside man in the market, you mean the man that sells to the retail poultry dealers and butchers?

A. That is it, Abe Rosenberg.

Q. That is the only man you generally talked with in the markets?

A. That is it.

Mr. Perlman: No questions.

Mr. Kroppy: I move to strike out all his testimony as having no bearing on the allegations of conspiracy here, and no proof at all tending to show that any of these acts were committed in pursuance or furtherance of any conspiracy alleged in the amended petition, and especially on the ground that everything the witness testified to relates to intrastate commerce solely and has no reference at all to interstate commerce.

Mr. Perlman: May I join in that and add to that that I move to strike out that part of his testimony with respect to conversation had with Rosenberg, and may I ask your Honor to reserve decision on that to say to at the end of the case whether there is any connection with Rosenberg as a co-conspirator.

The Court: No, I will rule on it now. I will deny both motions.

Mr. Perlman: Exception.

Mr. Kroppy: Exception.

[fol. 416] Bert Bass, called as a witness in behalf of the Government, being duly sworn, testified as follows:

(The following testimony, given at the former trial in October, 1929, was read in evidence, pursuant to stipulation and subject to objection and exception as to competency and materiality:)

Direct examination:

The Witness: I am in the live poultry business about six years in Brooklyn. I attended the meeting of marketmen of my borough during the summer of 1927 over in Grable's Hall. Those who were present were marketmen from Brownsville, Dave Hirshon, Morris Gordon, Rivlin, Hellman, Kadin, Oster, Franzel, Sorkin. Of these meetings, I attended about four, beginning about May and ending in June, 1927. Speaking about their trade, they said they were not supposed to take away any butchers that did not belong to them. I think they did say about a cent a pound for all poultry we take in. They did not say what was going to be done with the cent a pound. I didn't hear anybody ask. I paid a cent a pound to Lax and Lipkin. They came around about four times, once a week. I paid them $25 a week.

At the various meetings we were just talking about the trade. What was said was that every one was to pay a cent a pound and that we were not to take each other's butchers. There were a few disputes as to who was to get certain customers, and they were straightened out by the president of the meeting, David Hirshon, and Morris Gordon. They were between people who attended these meetings. The last time that I attended one of these meetings was in the latter part of May or beginning of June, 1927. I had [fol. 417] a conversation with David Hirshon about that time. I had a couple of butchers who went away from me and I refused to pay for them any further. He said he would try and get them back for us, and wanted us to keep on paying, and I refused to pay until I got them back. By "Pay" I mean these payments of $25 a week, just for the trade.

We didn't get any poultry the next day. I tried to get poultry in West Washington Market from a few commission merchants, Charles Collins and Schwab; no others. I did not get any poultry that day in the market or at the terminals. I tried the following day to get poultry at the terminals in Jersey. I did not get any poultry there. I

do not remember the commission men from whom I tried to buy. I was unable to get poultry at the terminals or at the market for about six weeks. During this period I got poultry from Harrisonburg, Virginia, and Boston by railway express.

I had a conversation at West Washington market with Arthur Herbert about five weeks after we stopped making payments. He told us to take union men and he would give us the stuff, because we had a couple of young fellows working for us. At first I refused and then I said O. K., and received my poultry. I took on one union man. I recall someone in West Washington market telling me to go over to a meeting and settle with Hirshon. I don't know which one told me. I think Tootsie Herbert was there and four other people. I do not know which one of the Herberts. It is the first time I ever seen them, I don't know them. The occasion that I am talking about is one time some five men drove up with a Pierce Arrow. Dave [fol. 418] Hirshon was there. He told me he wants to go over to the meeting place and settle it for me. I didn't go. I drove home. They followed me a few blocks.

I tried a few times on other occasions to get poultry in West Washington market. I don't remember when I tried, but I tried a few times and did not get any.

Q. Did you have any conversations down in the market on those occasions?

A. I did.

Q. With whom?

A. With the commission merchants.

Q. What did they say to you?

Mr. Kaufman: I object to any conversation with commission merchants who are not defendants.

The Court: Overruled.

Mr. Kaufman: And with whom we are not charged with any conspiracy.

The Court: Objection overruled.

Mr. Kaufman: Exception.

The Witness: When I tried to get poultry from they they have not go- it; they also refused. I don't remember what else was said. They said they did not have any for us. Tootsie Herbert said to me I could not get any poultry

there, on one occasion when I met him. No one else said anything of the kind.

Q. Do you remember his trying to stop you from getting poultry when you came down there?

A. Someone did, yes.

Q. Do you remember who it was?

A. I do not.

Q. What did that someone do?

Mr. Kaufman: I object to that as incompetent. A conversation with a person not identified.

The Court: Objection overruled.

Mr. Kaufman: Exception.

The Witness: He told me I could get no poultry and he told my driver to move on. I saw him talking to the com-
[fol. 419] mission men that one occasion.

I remember one day getting six coops of poultry from Schwab, around July or August of 1927. I remember a conversation with Arthur Herbert on that day. He told me, why should I take stuff on the sneak, when I can take a union man and he will give me all the stuff I want. I told him that I would take on the union man. Then I got my poultry. The same people who had refused me that morning offered it to me. The ones who refused me that morning and who offered it to me that afternoon were Berman & Badeker and Charles Collins, Werner and Garlick & Dinerman. That is all I can remember.

About two days after we were out of the corporation, Herbert told me to go up to Hirshon and straighten things up. I remember on September 5th, 1927, calling up Mr. Rice and making a certain statement to him as to what had happened that day in West Washington Market. Tootsie Herbert told me to get a union man and he would give me the stuff. He did not mention the name of Hirshon on that occasion. I remember during the time that I was telephoning to Mr. Rice, around June, 1927, that the conversation was interrupted by someone down at West Washington Market. A few men walked in. I do not know who it was. I called up from some booth there and they walked in and I just hung up. Tootsie Herbert was not one of the men that walked in. I would not recognize them now. I recall on one occasion when a man walked in and looked at my charge book, but I do not know who it was. I would

not recognize him because that was the first time I seen him. I have not seen him since.

[fol. 420] Q. What did he say to you on that occasion?

A. He looked over our charge book and he seen one of the charges there without a name, just a number on it. He told us it did not belong to me.

Mr. Kaufman: I move to strike out the testimony of this witness with persons unknown and who are not identified, upon the ground it is not binding upon any defendant.

The Court: Motion denied.

Mr. Kaufman: Exception.

Cross-examination:

The Witness: The meetings that I have testified to were meetings of practically all the people who were engaged in the poultry business in the section known as the Brownsville district. These meetings occurred in the summer of 1927. It was practically a local meeting, that is it was confined to the Brownsville district. I met certain people there that I have just identified and named; of course, I met them over in that district. At this particular time something to improve the condition of the business was discussed. Business had been bad, and they were trying to find something to improve that condition.

At one of the meetings it was agreed we were to pay $25 a week to get certain customers. As long as I got the customers I paid $25 a week, and when the customers left us, I refused to pay the $25 a week. I paid them for some five weeks, during the month of July and part of the month of August, 1927. When I ceased paying it, I had some trouble in getting poultry. I was not employing at that time a union man. I was told that if I put a union man on, I would get poultry. I put a union man in and I did get poultry. I did a strictly retail business. I handled at that time about forty coops a week and that ran about 200 pounds to the coop.

[fol. 421] By Mr. Kaufman:

During those six weeks I was getting in all the poultry I required from Harrisonburg, Virginia. The first time that I was told about putting union men in our place was the first

couple of weeks in August, 1927, by Tootsie Herbert out in West Washington Market. At first I refused to put on union men; then I did put on a union man; he was sent in to me. He is still working for me; his work is satisfactory. He has been employed by me since August of 1927. Since that time, I have not been making the payments that I referred to before, and I have not been interfered with or troubled in any way at all.

Redirect examination:

As to this poultry I got from other sources, I just sent a telegram and they sent it the following day. It cost me more to do business that way; lot of work sending the telegrams and taking in the baskets.

Mr. Kroppy: I make the same motion to strike out the testimony, on the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

The witness testified on this trial as follows:

Cross-examinatoin.

By Mr. Perlman:

The Witness: I am a poultry dealer. I employ shochtim who are members of the Shochtim union, and loaders, who are members of Local 167. I did not have any trouble with the unions when I employed union men. I have not had any trouble since the latter part of 1928. I am able to buy poultry and sell it at any price that I may fix. I have never had [fol. 422] any trouble in buying poultry in the West Washington Market or at any of the railroad terminals since 1928.

[fol. 423] Mack Harnett, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I was in the live poultry business in 1927, 1928 and 1929, with my father, Jacob Harnett, in Brownsville, in the same area as Hirshon's market.

I attended a meeting of Brownsville market men in July, 1927. Practically all the market men of Brownsville area were present, Morris Gordon, David Hirshon, Jacob Mintz, Louis Sorkin. The Prospect Live Poultry was represented, I don't remember by whom. Ike Kaplan; there was Kaidin, I don't know his first name; Jacob Koslow; there was the Junius Street Market represented,—I don't know their names, just about one or two of all. Howard Live Poultry Company was represented by Chazizanon, something like that. I don't think David Hasenfratz was there. Harry Gordon was there. The sons of the Schechter Brothers were there, I don't know their first names. Resnick was there; I don't know his first name. I think Franzel was there, and a man named Perlman. Harry Rubin was there. Morris Gordon called the meeting to order. At that time before the meeting two men drove around in an automobile and told us there was going to be a meeting held that night at Grabel's Hall. If I remember correctly, I think it was Carl Firestone and a fellow by the name of Murray who drove around. I just know him by the name of Murray. Carl Firestone told me there was a meeting to be held that night at Grabel's Hall, and I should be there. He did not say what sort of meeting. Neither David Hirshon nor Max Gordon invited me to attend the meeting, nor mentioned it be-
[fol. 424] fore the meeting.

Morris Gordon told us the meeting was called for the purpose of organizing the business, and that each man would have to bring a list of his customers to whom he sold in the last week of June, 1927, and that another meeting would be held a week from that night. The purpose was that each market man should have their customers and that each market would only be allowed to sell to their own customers, and in order to ascertain whatever customers belonged to certain markets, each member bring their lists and the market who sold the most poultry to that customer as of the last week of June, 1937, that customer would be compelled to buy there. That was agreed to by all of the market men present. Hirshon was one of the leaders there at the meeting. He acted as chairman part of the time. Between Morris Gordon and himself, they ran the meeting. Hirshon told us to be at the meeting next week and that everyone who will not be there, he will bring them to the meeting. They adjourned when they were told to bring their lists

at the next meeting. Nothing was said at the first meeting about customers. It was said at the meeting that if any of the markets at that time claimed the same customer, the market that sold the customer more poultry during that last week of June, 1927, the customer will be allocated to that market. They did not say how they were going to enforce this arrangement at the first meeting.

The second meeting was held a week later. The same market men were there. At that meeting we were told that we would have to pay one cent on a pound for every pound of poultry that we sold. I think it was just David Hirshon that said that. He said they would have to hire men to run the business and also to take care of the Attorney General's [fol. 425] office. He said payments to the State Attorney General's office would have to be taken care of, he did not mention any names. He did not say that Benjamin Simon had said anything about that.

The one cent a pound collections also would be used to hire men. What kind of men they were going to hire was not stated, they just said men. They did not use the term "gangsters." Hirshon said the function of these men was to see the business was run correctly, and that the cutsomers are buying their poultry where they were supposed to buy. They were to see to it that everything was run right. That is just the words they used. The checking up on the markets was done at the meeting that night. And, if I remember correctly, also at that meeting Hirshon said that if any customers will leave their places, these men will bring them back. Just those words. I don't remember anything else Hirshon said or what Morris Gordon said at this meeting. All the marketmen agreed to these practices outlined. Sam Resnick was the secretary of the meeting and he was in charge of the meeting at the time. No other collector was appointed at the meeting.

Later Morris Gordon and Sam Lipkin did the collecting. Koslow did the collecting. I don't know if they paid for that. Morris Gordon made collections from me. The first time they collected, Morris Gordon and Sam Lipkin came over to my place, they checked up on the books and ascertained the amount of poultry we sold, and at that time I gave them a check for the amount. I think it was fifty and some odd dollars. On the basis of one cent a pound, we made about 50 payments, but half of them were in checks, and the [fol. 426] other half in cash. Samuel Lipkin asked for cash.

I offered him a check. He said he wanted to make sure he don't get into any trouble, and he wanted cash. If I remember correctly, I think they were made payable to cash and one check was made payable to Sam Lipkin. He wanted it made payable to cash.

Exhibit 39 is a check written by Samuel Lipkin and signed by my mother. The date of the check is August 27, 1927, and is drawn to cash for the sum of $40. There is only one endorsement, Market Lunch, near West Washington Market. The signature of Joseph R. Rosalsky is also on the back of the check. I appeared on an investigation in the same case before Judge Rosalsky, and he at the time, when this check was an exhibit in that case, put his signature on the back of it. Through the State Attorney General's office, there was a hearing before Judge Rosalsky. That was the time when we had trouble with the association. That was either the latter part of 1927 or the early part of 1928. That check was handed Lipkin when he came around for a collection. He wanted at that time a cent on a pound and we wanted to make a flat rate with him, just give him $40 because we didn't want to pay on a retail business, and then he insisted we pay him all, and we gave him $40 and called it square.

The check Exhibit 39 for identification was paid. I know from my regular examination of the bank statements.

Exhibit 44 is my own personal check I paid to Sam Lipkin at the fourth meeting the market men held at Grabel's Hall. It was made payable to cash. The date is August 1, 1927. Sam Lipkin asked me for the payment of the previous week, and in return I gave him this check. Everything on the face of this check, excepting my signature [fol. 427] is in the handwriting of Samuel Lipkin. The poultry we sold prior to this check we estimated at 4,400 pounds wholesale. The check is for $44. (Government Exhibit 44 received in evidence.)

Exhibit 45 is my own personal check payable to Samuel Lipkin for $35, dated August 9, 1927. This check was made out by Samuel Lipkin, and I signed it, at a meeting a week following, on the night of August 9, 1927. He asked me for the payment for that week, and I paid it to him. We sold the week prior to the payment of that check about 3,500 pounds, wholesale; I didn't pay on retail.

I told him I only sold about 3,500 pounds, and he made out the check. As a matter of fact, I sold about 6,000 pounds wholesale. Samuel Lipkin examined our books to ascertain that. After examining our books, he asked for more money, but he did not get it.

Mr. Perlman: I object to it as incompetent and not binding on the defendants.

The Court: Overruled.

Mr. Perlman: Exception.

(Government Exhibit 45 received in evidence.)

The Witness: Exhibit 40 is a check for $40 given at my place of business September 10, 1927. It was made out by Sam Lipkin and signed by my mother. We had sold the week prior to the payment of that check about 4,000 pounds wholesale.

Mr. Perlman: I object to it as incompetent and not binding on the defendants.

Mr. Kroppy: It does not tend to prove a conspiracy or that it was given in pursuance of any conspiracy.

The Court: Overruled.

Mr. Perlman: Exception.

Mr. Kroppy: Exception.

[fol. 428] The Witness: These checks were received back from the bank as cancelled vouchers and charged by the bank into the account of the drawer.

(Exhibit 40 for the Government received in evidence.)

Exhibit 41 is a check for $45, made out by Samuel Lipkin, signed by my mother, and was handed to him in my presence. It is dated September 3, 1927, and the poultry we sold in the week prior was about 4,500 pounds. That check was received back from our bank as a canceled voucher.

Mr. Rice: Exhibit 41 offered in evidence.

Mr. Kroppy: Same objection.

The Court: Same ruling.

Mr. Kroppy: Exception.

(Government Exhibit 41 received in evidence.)

Exhibit 41 is a check that was made out by Sam Lipkin and signed by my mother on August 22, 1927. The

amount was $42, for the previous week of about 4,200 pounds of poultry sold wholesale. It was handed to Sam Lipkin in my presence. That check was received back from our bank as a cancelled voucher.

Mr. Rice: Exhibit 42 offered in evidence.
Mr. Kroppy: Same objection.
The Court: Same ruling.
Mr. Kroppy: Exception.

(Government Exhibit 42 received in evidence.)

Exhibit 43 is a check dated August 15, 1927, made out by myself for $43.59, and handed to Morris Gordon. The check is signed by my mother. On this occasion Morris Gordon was there with Sam Lipkin, and I made out the check myself and handed it to Morris Gordon. Lipkin checked up on the books at that time. The amount of poultry sold, wholesale, was 4,359 pounds, and the check is for [fol. 429] $43.59, exactly one cent per pound. That check was received back from our bank as a cancelled voucher. It had been endorsed by Louis Mirotznick, a marketman in Brownsville.

Mr. Rice: Exhibit 43 offered in evidence.
Mr. Kroppy: Same objection.
The Court: Same ruling.
Mr. Kroppy: Exception.

(Government Exhibit 43 received in evidence.)

The Witness: At the meetings of the Brownsville marketmen, the lists of the various markets were read, and they were ordered by Morris Gordon, who acted as chairman at the time that any market man who disputes a customer let him say so, and later on that evening the dispute will be taken up. Whenever a couple of market men claimed a certain customer, they would say so. After all these lists were read, then Hirshon, Jacob Mintz and a gentleman known as Pop Weinstein were appointed the arbitration committee to settle the dispute, and whatever they said in reference to the customer went. They were given that power to decide where that customer belonged. I had a dispute over three customers, and the committee allotted them to me, and they purchased poultry in my place. They asked me how much poultry these customers bought the

last week in June, 1927. The committee also asked the same question of the other market men who disputed the customer, and being that they bought more poultry in my place during that week, they were allotted to me.

Something was said at either the first meeting or the second meeting about maintaining prices. At the first meeting we were told that at that time we were charging about three cents over the market quotation on a fowl, and [fol. 430] five cents on chickens over the market quotation. At this first meeting, we were told to charge six cents on fowl and eight cents on chicken. David Hirshon told us that. All of the market men agreed that they would charge a margin of six cents on fowl and eight cents on broilers. They later increased that to eight cents on fowl and ten cents on chicken.

Dave Hirshon first told us about the one cent a pound at the meeting at Grabel's Hall. He said one cent on every pound of poultry would have to be paid to us, and that had to go towards the expenses of running the organization, and also pay the State Attorney General's office. He said they have to hire men to run the organization and also to pay the State Attorney General's office.

He told the marketmen not to sell poultry to strange customers, and also at the meeting while they made collections, there were some market men who refused to pay and he ordered them from the meeting. They did leave. They were Schechter, and Harry Dworkin. Neither Hirshon nor any one else said anything further as to any further payments to be made, and I do not know whether any further payments were made out of those collections. Later on some market men were paid. As business progressed and various disputes arose, then Dave Hirshon made settlements with various market men, and they paid them.

On one occasion Dave Hirshon accused me of selling poultry to a strange customer. I told him I did not. This happened in the latter part of 1927, just before the Rosh Hoshana holidays. At that time Arthur Herbert and Charles Herbert on the morning of the sale before the Rosh Hoshana holidays walked in my place about five minutes [fol. 431] after five and stated that we violated the union rules by starting men to work at 4.30—it was not true—and took the men out of the place. I think it was Arthur who said that we violated the union rules. There was his

brother Charlie, my father, and the man who worked there, Irving Gotkin, the shochet and myself.

Q. Had you violated the union rules?
A. I had not.
Q. In any respect whatever?
A. We did not.

Mr. Kroppy: I move to strike out the answer. There is no evidence as to what the union rules were, so he cannot tell whether they were violated or not.

The Court: Overruled.

Mr. Kroppy: Exception.

The Witness: The day before the union delegates took the men out of my place, I was accused by Hirshon for selling poultry to strange customers. After that I could not load poultry, and for a while I had to go out of town to get poultry. When I went to the West Washington Market, or went to the railroad terminal, they would not sell me poultry. From almost every one I am able to buy now. I had never been refused poultry before that time. I bought for several years, and my father bought poultry there for about twenty-five years prior to that. Our credit had never been attacked by the commission men. Our bills had always been paid promptly. One commission man, Jake Bloom, said "I would like to sell you some poultry, but you know I cannot get into trouble with the men. They would take my own men off the place if I sold you poultry".

Q. Did he refer to any one?
A. No, he did not mention any names. He just used the word "they".

Mr. Kroppy: In view of the witness' testimony that he used the word "they", and did not explain who "they" meant, I move the testimony be stricken out.

[fol. 432] The Court: Denied.

Mr. Kroppy: Exception.

The Witness: At that time, also, if I remember correctly, Jake Bloom sold me some poultry. He left it on his stand until midnight, and I came with some men at midnight, loaded the truck myself, and took it. I picked some men in the neighborhood. They were not members of Local 167. My father and I dealt with James Norris, Inc., for years.

Doc Norris is the main man. He told me the same thing, "I would like to sell you poultry. What can I do? I am not allowed to do so, and I cannot do it." At one time, he said "Harnett, why don't you straighten out? Why don't you get that over with? Why do you have this trouble?" I said "What did I do, Doc? I can't help it. They have been picking on me." I also tried to buy poultry from Arthur, S. Werner, Fleck, Hillman, George Brown, at that time, Charles Werner, and various other commissioners there. I just cannot think of all the other names. There are quite a number of commission men in West Washington Market, between 40 and 50. I attempted to purchase poultry from about 20. Then I went to Baltimore, to Philadelphia. At first I took my own truck. I also attempted to make purchases at the railroad terminals where poultry comes into the New York Central, at 60th Street, Manhattan, and the Delaware, the Erie, the Jersey Central, in New Jersey, from the same commission merchants. They sell poultry from the railroad terminals as well as West Washington Market. I was told at the railroad terminals that they are sorry they cannot sell it to me. I had regularly purchased poultry at the terminals before that time. No objection was made to our credit at that time. We did not [fol. 433] owe them any bills. We did not try any other place in New York. There were a couple of market merchant men who purchased poultry for me and turned it over to me secretly. At that time I think it was Dave Hasenfratz and the Junius Live Poultry Company. The market men said they refused to sell me because I sell poultry to strange customers. Several commission merchants told me they have been ordered by the union not to sell me any poultry, and if they did sell me poultry, they would have to close up their own places; they would take the men from their places, the same as they would from mine or anyone else. On one occasion I had already purchased this poultry from Doc Norris, and when I came over with my truck to load poultry, the workers refused to load the truck and Doc told me "Chief, I didn't know you had this trouble with the men. I am sorry. I will have to recall the sale.

Just prior to the time that I was unable to purchase poultry. I had sold to people that were not on my list. I had a customer who suddenly stopped buying in my market. A few days later I found out he was purchasing poultry from Morris Gordon and his two brothers. When they did

that I turned around and sold poultry to some customers who were buying poultry from the Gordon brothers. I went to their place of business and sold them some poultry. After I sold them poultry, the men were taken out of the place, and I could not load any poultry. In West Washington Market, I had a conservation with both Hirshon and Morris Gordon at the time. Hirshon asked me what is this trouble all about? I said 5105 Church Avenue belongs to me, and Gordon Brothers had no right to take that customer. I only did the same thing that he did. Then he called over Sam Sahn. Gordon Brothers belonged to Williamsburg, and Sam Sahn was supposed to be the leader of [fol. 434] that district. Sahn said "Listen, Harnett, let 5105 Church belong to Gordon Brothers, and I will pay you $50 a week". Gordon's market is not in Williamsburg, but they are in the district with Sammie Sahn. I refused it. I said the customer belongs to me. Although they may be brothers of Morris Gordon, they are not going to put anything over. I said "He belongs to me and I want the customers". Dave Hirshon was there, but had nothing to say. I took it up with Dave Hirshon, and he seemed to be pretty fair about the thing. He even remarked "If the customer belonged to you, I don't blame you for wanting him". I remember Sam Sahn threatened me at the time, "Unless you settle about it, it will cause you a lot of trouble". He said there was a place in the Bronx, that had a market full of poultry, and just before the sale they came up and took the shochtim out. "Now, you don't want the same thing to happen to you", he said. David Hirshon was there when he said that to me, but did not say anything. This happened on Hawks' stand.

I know Irving Gotkin; he is my second cousin. He was employed at my place at that time to handle poultry. He was a member of Local 167. He always sold poultry to any customer that I designated before the association. After the collections in Brownsville commenced to be made, he refused to sell poultry to strange customers. This was in the latter part of 1927, just before Rosh Hoshana, about September. A strange customer was in the place, and I sold him some broken fowl I had there, and I told Irving to hand out the fowl out of the coop. He says "I won't do it", and at the same time the rabbi says, he would not slaughter the poultry. When I insisted upon Irving hand-

ing out the poultry, he took his hat and coat and says "I am not going to jeopardize my job", and he walked out. [fol. 435] He did not say anything further. He did not see the list of the customers that had been assigned to me, but he knew all the customers who belonged to our place. The shochet refused to kill the poultry. He said the customer did not belong there and *was* he was not going to get in any trouble. He said he was told not to kill any poultry for strange customers. He did not say who had told him that. He was a member of the Shochtim Union. Charles and Arthur Herbert visited my market about that time. They walked into the place about a few minutes after five, just after the killing started, and took the shochet and the man out of the place. He walked in and said I violated the union rules by starting to work at four-thirty.

On one occasion Arthur Herbert, at the New York Central Terminal, told me not to sell any poultry to strange customers. No one else was there at the time. That is all he said.

On two occasions, when I was buying from out of New York, I saw an automobile trailing me. I drove through the streets, made various turns, and this car made the same turns I did. I spoke to a patrolman. He stopped the car that was trailing me and asked the driver for the license, and the driver was Carl Fireston's brother. He was the only one in the car.

On another occasion a patrolman stopped a car, and in the car were Rosenstein and David Kaufman. I understand Kaufman is a delegate of 167. Those are the only two occasions I know of when any one followed me.

I saw Jacob Koslow and Carl Firestone watching my market, and on one occasion I was watched there by Harry Herbert. I think it was one of the Herbert boys. I do not [fol. 436] know if he is the market man or not. This was about the early part of 1928, about 7.30 in the morning when the truck was loaded with the orders, Harry Herbert looked around the truck and looked at all the tags showing where all the orders were going to. He happened to see the tag of a customer named Rubin, and he told me that I had no right to sell poultry to this man. Harry Herbert examined the tags before Arthur Herbert and Charles Herbert came to my place of business.

Every day or so Jake Koslow or Carl Firestone would walk into my place of business just when the butchers would be there killing their poultry, to see who was there buying poultry. This happened over a period of a few months, during the length of this association. They had not been in the habit previous to that time of coming to my place of business. I did not have any business transactions with them. They had no conversations with me in regard to why they were at my place of business. They came together, and drove around in the same car. They stayed just a few minutes, take a look and walk out. They had no conversation with me, except to say good morning or so; that is about all. They did not have anything to say to other people in the place of business.

On this occasion, just prior to the Passover, Arthur Herbert was not there, it was Charles Herbert and Carl Firestone came in the place. Charles Herbert did not say anything. He walked into the place and told the men to put on their hats and coats. Nothing was said about the hour of the day, or about the time when my labor men could start work. This was at about two minutes after five in the morning. I told him to take the men and get [fol. 437] out of the place. He called me a nasty name, and I called him one back, and that was when he took a swing at me with his fists. He just missed me. Then he picked up a trough and attacked my father. It is made out of tin, about three feet or so long, and weighing about seven or eight pounds. He lifted it up the same as you hold a baseball bat and hit my father, who is about 65 years old, over the arm. I attacked him myself when he did that. Nothing else happened. Carl Firestone at the time dragged him out of the place, and the men left in the meantime. Carl Firestone had come in with him.

I don't know whom Firestone worked for, but on one occasion I saw Jake Koslow hand him $75. Koslow is one of the market man in Brownsville. He was one of the collectors. At that time Carl Firestone was not employed in the market of Jacob Koslow. I saw Jacob Koslow in the presence of Carl Firestone other times, when he and Carl Firestone used to come over to my place. On one occasion when I was talking with Sam Rubin on the telephone, I was on one extension, and after I got through speaking to the butcher, Rubin, I went into the market.

Charles Herbert was in the market, and he told me he was on the other extension and he overheard the conversation I had with this butcher. That is all he told me. He told me not to sell any poultry to strange butchers.

A few days later, I went to West Washington Market to purchase some poultry. The commission men refused to sell it to me.

Mr. Perlman: I move to strike it out unless he states where he went and who refused him.

The Court: Denied.

[fol. 438] Mr. Perlman: Exception.

The Witness: I attempted to purchase poultry from about 15 or 20 commission men, on this occasion. They said they were sorry, they could not sell it to me. They told me "You have got trouble over there, and we have got orders not to sell it and we cannot sell it". They did not say who gave them the orders or what the trouble was that I got into.

Two or three days after Charles Herbert told me that he had listened in on a telephone conversation with Rubin, I saw Sidney Rosenstein in West Washington Market, stooping under the tires of my truck. He stuck an ice pick or something like that in the tire of my truck. I just caught him as he was pulling the ice pick out. When I came up to my machine, two tires on the left-hand side were flat. I just happened to look at the truck and I saw a figure stooping there, and I ran around the truck, near the left rear wheel. That was one of the tires that I found flat. As soon as he saw me he ran away. He did not say anything to me about that later. I think he worked in the Borough Park section. He didn't work in any market. I don't know what he did.

I attended a meeting on election day in November, 1927. Carl Firestone came around and told me there was a meeting at Grabel's. Morris Gordon was chairman of the meeting. David Hirshon and all of the market men that I stated were at the prior meetings at Grabel's Hall were there except Dave Hasenfratz. Dave Hirshon said we have got to collect the money, the penny on a pound. He told it to everybody at the meeting. He did not say anything else, that I can recall. I think on that occasion one market man, Schechter, refused to pay, and he was ordered from the meet-

[fol. 439] ing; and at that meeting, if I remember correctly, I was accused of selling poultry to a strange customer, and I was ordered out by Hirshon. I think I did go out and that is all. I don't recall the customer on that occasion. I was there with my father, and after I was ordered out, Morris Gordon intervened and offered to make a settlement of all this trouble we have had with strange customers, and the fact that on occasions we could not purchase poultry and we secured poultry from out of town and sold openly. He said "Why not get together and straighten this thing out". Hirshon, my father and myself got together and we spoke it over; and at that time Hirshon agreed to pay me $200 a week not to do any wholesale business. He did not say where that $200 a week was coming from. It came from the moneys collected from the cent a pound, because on one occasion when I was over to his market and I was supposed to collect $200, he gave me a check of Abe Franzel's for $200, and he happened to remember "I just got this check from Franzel in payment. Here you take it". Abe Franzel is a market man in Brownsville. The final settlement was that I should receive $200 a week just to do a retail business, and I promised them I would not do any wholesale business. Hirshon asked me to make that promise. It was all done between Hirshon and myself.

I was paid $200 a week for about three months, and I stopped doing a wholesale business for the same length of time. I stopped making the one cent a pound payments at that time. When the settlement was made for $200 a week, Hirshon said I was not to make any payment, and [fol. 440] was not to do any wholesale business. That was the agreement between Hirshon and myself. After that I was able to purchase any poultry in West Washington Market, and I did the very same day.

Prior to that I had not purchased poultry in West Washington Market. I bought it out of town, Baltimore, West Virginia, Bridgeport, Philadelphia. I rode the truck on one occasion to Philadelphia. When I was on the way back from Philadelphia, I noticed I was being trailed. I did not see who was in the car, but the car was one of these flashy Packards, a car that you can easily tell, and I have seen on previous occasions Arthur Herbert drive that car. I am pretty positive it was that car.

Q. Did you see the license?
A. No, I could not see it.

Mr. Kroppy: I move to strike that testimony out.

The Court: Overruled. We will take it for what it is worth.

Mr. Kroppy: Exception.

The Witness: I heard Morris Gordon say something about not loading poultry for people at any time at a meeting. He had some trouble with, I think, the Junius Street Market, and he told his fellow unless he paid at that time, he would not be able to load any poultry. When they were making the collections, they asked this man for his payment. He refused to make the payment, and Morris Gordon told him unless he made the payment, he is not going to load any poultry. He did not say where. I think a market man from Junius Street Market paid. I don't remember how much he paid. I have heard Sam Lipkin say that they [fol. 441] wanted the payments made in cash, but how they actually paid I do not know. When Sam Lipkin was over at my place, and at a meeting, he asked for cash. He said they do not want to have any trouble.

The first two weeks, payments were made at the meetings at Grabel's Hall. On those occasions, they were mostly checks, made out to cash. I should judge there must have been about six or seven thousand dollars. I know that, because I happened to sit next to Sam Lipkin. He had a list there. As he got these checks, he marked on the slip next to the name of the market, and just by glimpsing at it—I added the hundreds and fifties. Those were only the payments by the market men in Brownsville. This was the second meeting. At the first meeting there were no collections. I do not know whether the payments continued to be about the same amount. I paid about $50 every week.

I saw checks there for $300. On the first occasion, I saw Jacob Mintz hand over a check for $300. There were a couple of them handed checks in figures of $300. I do not remember the amount paid by Hirshon; I know it was a couple of hundred dollars, and Morris Gordon, the Prospect Live Poultry Company, the Howard Live Poultry paid a check. I know the Howard Live Poultry Company paid over $300. One of the partners is Chasanov. Then there were amounts ranging, I think—Our payment was about the

smallest one. No payments were made out of that fund to market men that I know of. They paid me $200 a week. I know they paid other market men in Brownsville. I know they paid the Junius Live Poultry, because I was on one occasion at the Chamber of Commerce, and I was paid, and I saw them there. Hirshon made the payments at the Cham-
[fol. 442] ber of Commerce, but I seen Ben Simon up there on numerous occasions. He was present, but did not say anything. I think he saw the payments made. The payments to me were made on Fridays; practically all of them were made at the Chamber of Commerce. I saw the smaller market men of Brownsville pay money at the Chamber of Commerce, but none from any place else.

I never saw Louis Spatz at the Chamber of Commerce. I saw the delegates of Local 167 up there sometimes, but they never interfered with me. I think I saw Arthur Herbert and Charlie Herbert up there, but they never had anything to do with the payments. I mean I did not see them have anything to do with the payments. I did not see anybody else at the Chamber of Commerce Office. I do not know of any business that these delegates had at the Chamber of Commerce office.

Sam Lipkin told me that he had a record; he kept records of the moneys they collected and paid. He said he had a list of all the markets and how much he collected. I saw David Hirshon make entries in books in the Chamber of Commerce. On one occasion when I was paid, after he paid me, he took a small book out of his pocket, and he checked off the payment.

On the occasion that I saw $75 pass from Jacob Koslow to Carl Firestone, Carl owed me $20 and he says "Wait a minute. I have got to be paid right away. Wait a minute, and I will give you that $20 I owe you". I never saw anybody else make a payment to Carl Firestone.

I had a conversation with Joe Weiner on one occasion, at the time when I couldn't load poultry in New York. I think he and Arthur Herbert drove over to my place and
[fol. 443] asked me to take union men. I told them at the time if I needed them I would take them. I did not have union men in my place of business at that time. I had had no union men prior to that time for about two weeks. I had not discharged my union men and they had not left me. They were taken out of my place. Joe Weiner told me on

this occasion "Why don't you take four union men". I had had prior to this time, one union laborer and one shochet. I only need what I had before, one member of Local 167 and one member of the shochet union. I had been told prior to that time to take more than one union man and one shochet. On this occasion I spoke to Ben Simon at the Chamber of Commerce on Saturday morning, and I said "Mr. Simon, what is the idea? Why can't I load poultry in New York?" He says, "Why don't you go and take four men?" I says, "Take four men?" "Listen, Mr. Simon, don't tell me any story about taking four men. You know what this is all about. This is not a case of taking four men". And I said "You know the kind of men they send, if you take four men". He says, "You go and see Harry Schomer. See what he can do". I saw Harry Schomer. He said "Go and see Arthur Herbert". I did not go to him. During the time that I had only one union man, that is, one member of Local 167 and one shochet, Joe Weiner never asked me to take more than that. On the occasion when Joe Weiner came to my place of business with Arthur Herbert and I had a discussion with him about taking union men, he told me to take four men, and I told him I didn't need them. He did not say why, he just came in and said take four Local 167 members and two shochtim. I told him I did not need the four men. He went away, didn't say anything; that is all that happened. I have given the whole of the conversa-
[fol. 444] tion so far as Weiner and I took part in it.

On a Sunday morning in my place, during the summer of 1928, Carl Firestone told me "Watch out, you are liable to get the works." He advised me to stay away from the business for a while. On one occasion when I was over to his place of business with my mother, I spoke to Hirshon with reference to loading poultry. He says "You will take $150 a week or you will not load a pound of poultry." He says "You will take $150 a week or we will put you out of business." He did not say anything further. He walked out. This was the early part of 1928. He says I wouldn't be able to load a pound of poultry at New York unless I took the $150 a week. He said in Yiddish "As quick as you can find a place where to load poultry, that is how quick we will find a place where to stop it."

On one occasion, when I started to leave New York for Bridgeport, I saw Sidney Rosenstein and David Kaufman

trailing my truck. I went on out of the way trail to find out if they were trailing my truck. I looked out and saw they were following me and then when I was ready to go to Bridgeport I drove out a few blocks. They followed me and then I stopped on a corner where a patrolman happened to be standing and I told the patrolman I was being followed, and the patrolman held them off while I left with the machine. They did not say anything to me on that occasion. This was not in Bridgeport; this was near my place of business, when I was ready to leave for Bridgeport. They followed me a few blocks.

[fol. 445] Cross-examination.

By Mr. Perlman:

The Witness: I am married, but do not live with my wife. I have been separated from her about three years. I live in Baltimore. My wife lives in Brooklyn. Our one child is with my wife. I am working for the Lexington Surety & Indemnity Company during the last year. I lived in Baltimore last year, but this year I went to live in Baltimore about a month ago. Before that I was in the civil jail six months for contempt of court in not paying alimony. My mother is in the live poultry business today, the same as she was in 1927 and 1928. This market business in the years of 1927 and 1928 was my father's and my own. My mother may have looked out after the business, but she did not own it. I did not make an investment in that business myself. In 1927 I was 27 years old. The business has been there now for about 27 years. When I was old enough, my father took me into the business, and my mother continued to help. I signed check stubs in 1927, before I had any dealings with Hirshon. My mother signed all checks for this market business from about the middle of 1927 until about the middle of 1928. The business is owned by a corporation. I still own 50 per cent. of the stock and my father owns 50 per cent, but I am not in the business. I am not living with my parents now. I stopped doing business with my parents after this trouble in the early part of 1928. My father has continued that business until now, but I never went back to it. I know my parents are now employing one union shochet and one union loader. The last time that I ever talked with any of the Herberts was about the middle of 1928. The last

[fol. 446] time I ever spoke to Joe Weiner was the early part of 1928. The last time I ever talked to any member of the Shochtim Union or to any member of the Local 167 was in 1928. I have not had any trouble nor do I know of any that my father had with any member of Local 167 or the Schochtim Union or with Herbert or Weiner or Schomer since about the middle of 1928. My father's business has been perfectly peaceful since that time, and he has been able to buy and sell poultry since that time without interference at all.

I talked with a butcher named Rubin on the telephone. That telephone was in my home, and the extension was in the market. The home was, I should judge, about 150 feet from the market. Rubin called me and I talked with him from my home. Later Charlie Herbert told me he heard the conversation over the phone in the market and he told me not to sell any poultry to strange butchers. I am sure about that.

I testified about that in the criminal trial. I think I said that on the criminal trial.

Q. Do you recall being asked these questions and making these answers:

"Q. Do you remember a conversation with a butcher who was not supposed to be a customer of yours about which you talked to Mr. Charles Herbert?

"A. I do."

Do you remember being asked that question and making that reply?

A. It is in there, I suppose I made it.

Q. Well, do you remember it?

A. I think I did, yes.

Q. Do you remember this:

"Q. Will you give your conversation with Mr. Charles Herbert first?

"A. I don't recall what that conversation was about, but I do remember that some butcher called me on the phone and I happened to be in the house, and we have an extension in the house and in the market, the same phone, and Mr. Herbert was in the market and I was in the house and answered [fol. 447] the phone in the house and he picked up the receiver on the other end.

"Q. How do you know that it was Mr. Charles Herbert in the market who picked up the receiver on the other end?

"A. Because when I went down to the market he told me about it."

Do you remember that?

A. I think I did.

Q. Do you recall testifying that way?

A. I think I did.

"Q. When Mr. Charles Herbert spoke to you and told you that he had heard that conversation, did he say anything else?

"A. No."

Do you recall making that reply?

A. If it is in there, I made it.

The Witness: I am not adding to it. I said it today as I said it then. If I did not say at the criminal trial that Charles Herbert told me not to sell to a strange customer, I left it out.

I recall that I testified on direct examination that I saw Harry Herbert one day looking at some tags. Whether he said anything to me at that time, I don't remember. He may have. I think he did say something.

Q. I will read to you from the testimony at the criminal trial about that:

"Q. Will you describe your experience with Mr. Harry Herbert to the jury?

"A. On one occasion he was over to my place and he looked at some tags on the bags that were going out to the butchers.

"Q. Did you have any business with Harry Herbert on that occasion?

"A. No, I did not.

"Q. Did he say anything to you?

"A. No."

A. If it is in there I made those answers.

I say the same thing now. I don't say he said something to me, I say I don't remember if he said anything or not.

By Mr. Perlman:

I remember testifying at this trial that one of the Herberts came to my place of business, and asked me what I

meant by having my men work at half past four in the morning, and that he got the union men out. I recall making this answer to a question put to me concerning this incident at the criminal trial: "I told him to take the men, the union men, the men that he was delegate for and get out of the [fol. 448] place." That was true. It was the occasion when he took a pass at me and I countered with a pass at him, as I testified. He didn't loke the way I answered him, and so we got into a fight. I struck him and he struck me and he struck my father. That is what I told Herbert "Take the union men out of the place," and he took them out. He kept them out as long as I wanted them out. He kept them out for that two weeks period that I described. And Joe Weiner came along and said "Why don't you take union men," and I said "I don't need any union men, when I need them I will send for them."

About the newly painted automobile that I said belonged to Arthur Herbert, I think I told that story at the criminal trial. The car was a Packard. I don't know what year it was. It is an open passenger car. Well, I wouldn't say, it was a seven passenger car, it may have been a five. I suppose it is a stock model. I have seen many Packards. You don't see many of that color. I see these Packard cars going along the streets, once in a while. I saw them in 1927 and in 1928. I did not see the license on the plate and I don't know the license number of any car that was owned by Herbert. Even if I saw the number, I wouldn't recognize the car as being that belonging to Herbert. It is hard to explain that color. It was one of those flashy cars. It was a light colored car. You might call it light brown or light grey or something. It is hard to explain the color of that car. I haven't seen many light brown Packard cars. This new Packard car at the time I saw it, was trailing me in New York City. I just got out of the Holland Tunnel and drove town towards Canal Street, coming from New Jersey to New York. I first saw the car on Atlantic Ave-[fol. 449] nue in Brooklyn. I had gone from New Jersey through the Holland Tube over Manhattan Bridge to Brooklyn. That takes some time. Finally, I came down to Atlantic Avenue, Brooklyn. I observed this car. I think there were four passengers in it but I can't remember who they were. I couldn't recognize them. I knew Herbert and I could recognize his face. I would not say at this time that one of the four men in that car was one of the Herberts.

This automobile at the time I first saw it was, I should judge, about 75 feet back of me. It was almost midnight, and it was dark. There was very little traffic at that time. The car went all the way from Atlantic Avenue to my place of business, maybe three or four miles. I wa-n't driving the car. I was sitting near the owner of the car. It was a car belonging to the Levitt Trucking Co. It was pretty dark that night. I didn't recognize the men in the car. They kept back of me approximately 75 feet. It may have been at times 50 feet behind me and I couldn't see who the four people were. I recognized the color of the car that night as being a light brown, it stood out in the dark. That is the only way I just recognized the car, nothing else. I am not saying positive it was Herbert's car, but I think it was his car, that is what I am saying.

I recall testifying on direct examination about having some talk with Dr. Norris. He was a commission man. I had been doing business with him before. On this occasion, I went to him and asked him to sell me. He said "Sorry, we have trouble there. What could we do, we can't sell it. If we are going to, we are going to take a chance on having the union take their own men off and we would have to close [fol. 450] the business." He told me that he did not want to have trouble with any union, not exactly those words, but in substance. I had talks with him about selling me poultry or refusing to sell me on several occasions. He told me that on account of the union, I couldn't load my truck, and he couldn't sell me.

Q. And you testified that way in the criminal trial, didn't you?

A. Yes, sir.

Q. Now, let me read to you now, will you listen to these questions and these answers and tell me whether you heard the questions and made the answers to them:

"Q. Did you deal with Mr. Norris?
"A. Yes, with Doc Norris.
"Q. And did he refuse you credit?
"A. He never refused us credit, no.
"Q. Did he refuse to sell you chickens?
"A. That is right.
"Q. Did he refuse to sell you chickens for cash?
"A. Absolutely.

"Q. He did?

"A. Absolutely.

"Q. Now, name the time and place where this refusal on his part took place.

"A. It was a time when I was unable to buy any poultry. I saw Doc Norris at the railroad at the New York Central. He had four cars there that day, and I said 'Doc, I want some poultry'. He said 'I am sorry. I am sold out.' I said 'Doc, if you want cash, I will give you cash'. He said 'How can I sell you poultry if I haven't got any. I am all sold out'."

That is the time you testified about in your direct examination, isn't that correct?

A. Yes, sir.

"Q. He had four cars that day and I said 'Doc, I want some poultry'. He said, 'I am sorry, I am sold out'. I said 'Doc, if you want cash, I will give you cash'. He said 'How can I sell you poultry if I haven't got any. I am all sold out'."

Q. Do you remember that?

A. Yes, sir.

Q. He said he was all sold out. That is right? Do you remember that testimony?

A. Yes, sir.

[fol. 451] Q. Now, will you say that you testified at the criminal trial more than two years ago that when you talked to Doc Norris he told you he couldn't sell you because the union wouldn't let him?

A. That is another occasion.

Q. Did you testify?

A. Yes, I testified to that.

Q. At the criminal trial?

A. Yes.

Q Mr. Harnett, I want to read to you a part of the summary of your testimony as agreed upon between the Government and the counsel for the defense in that criminal case, and please tell me whether that is correct. The statement is on page 93 with respect to Norris.

"With respect to Norris, I bought from Norris as late as April, 1929. He refused me, as I have testified, in February or March, 1928. It isn't a fact that he refused to sell

me because I had not paid our bill or because I had given him bad checks. He never did sue us. I have paid him in full. At this time we are paying Norris off at the rate of $25 a week, for a business transaction this past April, not for transactions at that time."

Is this testimony which we have just referred to, is that correct?

A. Yes, sir.

Q. When he told you that, he was sold out? Is that right?

A. Yes, sir.

Q. "He refused me, as I have testified, in February or March, 1928. It isn't a fact that he refused to sell me because I had not paid our bill or because I had given him bad checks. He never did sue us. I have paid him in full. At this time we are paying Norris off at the rate of $25 a week, for a business transaction this past April, not for transactions at this time."

That is correct?

A. I never said that.

Q. Is that a correct summary of what you said?

A. No, sir, I never said anything like that.

Q. Is that a fair summary of what you said?

A. No, sir, I didn't say it, I didn't say that.

Q. Didn't you just a few minutes ago then say that every time that you talked to Doc Norris, he refused to sell you poultry? He told you that he couldn't sell you because the union wouldn't permit him?

A. On several occasions, I wouldn't say exactly every time, but on several occasions. We had so much trouble with them on so many different occasions that he told me [fol. 452] that on several different occasions.

The Witness: Doc Norris did tell me sometime that he couldn't sell me because he was sold out. He didn't tell me on those occasions.

I testified to going to the race track with Sam Lipkin. He used to be the collector. I didn't give him any checks which were returned. I never had any personal dealings with him. I never borrowed any money from him. He doesn't claim that I borrowed any money. At that time I operated a retail market, and then I operated as a wholesale and retail market. At other times I discontinued our

wholesale end of it and sold only retail. When we were paid by Gordon or by Hirshon or anyone else $200 a week or less, we only continued a retail market. When we conducted a retail market we had union shochtim, and the union shochtim that worked for us in a retail market were to get $45 a week. They were to get $45 a week for killing the chickens or poultry only when it is sold to the householders, and not to the butcher. Before this association, when a butcher would come in and want the shochtim to kill poultry in our market, they would do it. Under the rules of the union, when we employed union men, if we conducted a retail market, we were permitted to pay $45 a week to the shochtim. It is not so, that that would be after we notified the union that we were going to conduct simply a retail market. We did notify the union that we were going to have a retail market. They did not say they would send us a shochet at $45 a week. When we wanted to conduct our business as a retail market, we would want only a shochet who would get the rate or scale of wages [fol. 453] paid to a shochet in a retail market, $45 a week. It wasn't the regulation or rule of the union, that when a shochet was employed at $45 a week he was to kill poultry only when sold to the householders. We did not have difficulty with the union. When we sold to the butchers, then we were conducting also a wholesale business, and then the union required us to pay $65 a week to the shochet who would kill for the butchers. We sometimes paid more than at other times to the shochet, depending on the kind of a market we ran. When we were selling to the butchers, we were not obliged on all occasions to pay a shochet higher wages than when we were selling direct to the householder. That wasn't exactly the rule of the union. I remember there was a time when a shochet refused to kill some chickens in our place, and when the shochet refused to kill chickens, the helper refused to work. We were paying the shochet at that time more than $45 a week. That wasn't during the time we were not supposed to sell wholesale and were getting $200 a week for it, or during the time that we were only to conduct a retail market and were on the sly selling to wholesalers. There was such a time, though. At that time when the complaint was made that though we were getting money not to sell wholesale, we were selling to butchers, we paid our shochtim retail wages, which is

$45 a week: It isn't so, that a shochet getting retail wages under the rules of the union would refuse to kill poultry sold to butchers. It isn't so that he did refuse and could refuse to kill for butchers. I cannot answer yes or no as to whether I insist on our shochet killing for the butcher or the household regardless of whether his wages were $45 or $65.

I never had any union trouble in 1927 or 1928 or any [fol. 454] time. During the whole of the year 1927 my employees who were union men left our place of business and refused to work for us twice, and in all of 1928 once. In 1927 I never employed any help that wasn't union help. During the two weeks in 1928, I had employed some scabs. It wasn't a case of the union. Weiner did not come in and tell me after that that I ought not to continue to employ scabs and ought to re-employ union men. I did discharge the scabs and re-employ union men. That is one of the occasions in September or October, 1927, that I was talking about. The second trouble was about December 1927. I was then employing union men. They walked out on me. They were out a few weeks. I employed scabs during that period that they were out. The union did not demand that I reemploy union men. I discharged those scabs and took union men back in our place. In 1928, I had my troubles in March or April. The union men left me and stayed out until about June. During the time the union men were out, I did employ scabs, and some time in June I discharged the scabs and reemployed union men. I had no complaints about my not paying the union scale of wages to the shochtim. I don't say I paid the union wages, but it was never any complaint. I think on one occasion the union men got a little less. There were no times when I asked the shochtim to kill more than they were required to kill under the agreement with the union. I always employed union men. There was never a time when I would not. None of the boys on the street were called in to help.

I testified here that some commission men told me that the union would not let them sell to me, and I testified to [fol. 455] that effect at the criminal trial. I am sure about that. Outside of Mr. Norris, the names of some of the commission men who told me they would not sell me because the union wouldn't let them, was Jack Bloom. At that time they did not use those exact words, but words

to that effect. On occasion when I went to West Washington Market, he says "I will sell you some poultry but what could I do, they won't load you". Bloom told me that the union won't load me. That was all that was said. I can't remember another commission man's name that told me he wouldn't sell me because the union wouldn't let him. Others told me they can't sell me, they can't do it. That is about all. As I told you before it was Doc Norris and Bloom who told me that the union wouldn't load me. And those were the only two that said that.

At the first meeting, there were about thirty market men in Grabel's Hall. Every one of them paid. There were four of them who paid $350. I am not committing myself to the exact amounts. At less than $350 and over $300. There were a couple, about ten, paid $250. About five at $200, the rest you can say could average about $100. I gave about $50, I got off the lightest. I saw every one give his check. I was sitting right next to Sam Lipkin, I was a few feet away from him. The four that gave $350 were Mintz. He may have given $400. There was Hirshon. I don't know the exact amount he paid, but it wasn't over $300. There was the Howard Poultry Co., they gave pretty near $400. There was no other that I can recall who paid $350 or over. Outside of two under $100, the rest were $100 or over. Sam Lipkin got all the checks that day. Benjamin Simon was not at that meeting. We discussed how we could stop some of the butchers from refusing to pay their [fol. 456] bills. Somewhere between thirty and forty people were there, and they collected about $8,000, an average of more than $200 each. It was a tax based on one cent a pound for every pound of poultry we sold. There was talk about making the butcher pay his bills, but there was no such talk for forming the organization for that purpose. We were trying to find a way to stop the butchers from defaulting on their bills, and that is one of the reasons we were there for. There was a lot of discussion about finding a way to make the butchers pay. I lost a lot of money to some of the butchers, and complained about it, too. One of the main purposes was to make money, to try to better the business and make money. I think that is the reason that we went down there. The market men

were discussing ways and means to stop the butchers from failing to pay their bills, and how they could go on and do business and make a fair profit above their overhead. There was complaint that the amount that we were charging for poultry wasn't enough to cover our overhead.

Redirect examination.

By Mr. Rice:

The Witness: On the occasion that I saw the Packard car following me along Atlantic Avenue, I turned at several points. It was not the natural route that I would take. The Packard followed me on that route several miles until we got to the market.

The occasion that I told Joseph Weiner that when I needed union men, I would call him, was when we just got in a lot of poultry from Baltimore, and Joe Weiner come over and he says "You take four men". "You can load poultry in New York", but I know what those four men meant. They worked it in other markets.

[fol. 457] Q. Did you know whether or not it was the practice of the union to require markets to take four members of Local 167 and two schochtim, whenever the market men refused to pay one cent a pound or sold to strange butchers?

Mr. Eisler: I object to the question on the ground it is calling for a conclusion of the witness. We want facts in this case and not what his conclusion is.

The Court: Objection overruled.

Mr. Eisler: Exception.

The Witness: They did. I knew that that happened on a number of occasions during 1927 and 1928. That was their practice. I do not know of any instance where either one of the unions required a market to take four members of Local 167 and two shochtim if they had not refused to pay one cent a pound on poultry or sold to strange butchers. On this occasion when the Packard car was following me, I was driving about two miles an hour. I recall the occasion when I testified at the criminal trial. I testified at that time to the best of my knowledge. I may have been a little nervous.

When I testified at the criminal trial that Doc Norris simply told me he was out of poultry, that was the one occasion at the railroad when he gave me to understand he was out of poultry. There was another occasion when he told me he wouldn't give poultry to me because of the unions. I was not asked at the criminal case all of the occasions when Doc Norris refused to sell me poultry. I was just asked certain occasions, and I explained those occasions. I was only asked as to any occasion when Doc Norris said that he couldn't sell me poultry. And I did not understand I was being asked as to all the occasions when Doc Norris said he couldn't sell me poultry because [fol. 458] of the union.

Q. Now, are there any other explanations you would like to make as to the differences between your testimony here and at the criminal trial?

A. As I said, there are so many different occasions. We dealt mostly with Doc Norris and on other occasions—this is the first time that we ever had this trouble. I offered to give him cash and they wouldn't load me. My troubles continued on and off for about a year. I tried to purchase poultry in West Washington Market, I should say on a hundred occasions. I had difficulty on a hundred occasions during the year 1927 and 1928.

The Court: Why did you fail to state at the criminal trial, after that telephone conversation with Rubin over the telephone, that Charles Herbert told you not to sell to strange customers? What is your explanation?

The Witness: I don't know. I don't know if I was asked that or not. It may be a mistake. I don't know, your Honor, but that is the truth of it. I may have misunderstood, possibly. I was on the stand there for about three days. I possibly may have said something I didn't understand.

Q. Are there any further explanations that you wish to make?

A. That is all.

Mr. Perlman: You asked him how many times he was refused the poultry, and he said 100 times. Your Honor recalls that. It is very interesting here. It is very differ-

ent from what was said in the transcript of the record for the Circuit Court of Appeals on page 83:

"You are correct in understanding that there were only two occasions when I personally was refused a sale of poultry in the West Washington Market or any other place and one of these occasions was in November, 1927, and the other occasion was in the latter part of February or early part of March, 1928."

Mr. Rice: Let me ask you a question about that.

Q. Those are the two occasions that you refer to. Will you now state what you mean by the two occasions?

A. By the two occasions I meant there were two lengths of time that I could not buy poultry at the railroad or West Washington Market. When I said 100, I mean for every specific time when I attempted to go and buy poultry. I may have gone to ten commission men on one day.

Q. Your trouble on this occasion extended over a period [fol. 459] of time, a period of weeks?

A. A period of weeks, that is what I meant for each occasion.

Mr. Kroppy: I would like the record to show a motion on my part to strike out the testimony which witness Mack Harnett gave, on the ground that none of his testimony showed a conspiracy in restraint of interstate commerce, and on the ground that the acts and declarations which he testified to were not shown to have been committed in furtherance of any conspiracy in restraint of interstate commerce.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 460] SAMUEL EDELSTEIN, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

(The following testimony, given by this witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to its materiality and competence:)

Direct examination:

The Witness: I am in the live poultry business. I bought my poultry from G. Z. Hawk, a commission merchant. I have been in the live poultry business about fifteen years in Brooklyn. I attended the meeting of marketmen of my district during the fall of 1927 on Pitkin Avenue. There was quite a few of them present—Hirshon, Morris Gordon, Hellman, Benny Danziger, Harry Rubin, Louis Mirotznick, Abe Franzel. I cannot think of any more. There was no chairman.

I remember talking with Hirshon about a customer of mine named Liebowitz. He said I shouldn't give him any poultry, and that I should pay $20 a week to the association. I sold to Liebowitz after that. That was two years ago. Nothing happened after that. Tootsie and Charley Herbert and Harry Shomer told me not to sell Liebwitz. That is all they said to me. I am acquainted with Carl Firestone. I think he was with those three men when they came in and told me not to sell, but I don't remember.

I had a conversation with Tootsie Herbert down at Charley Hawk's stand about selling to Liebowitz. It was two years ago; I don't remember the date. He asked me if I am selling Liebowitz poultry. He said "How much [fol. 461] are you selling him?" I said between four and five hundred dollars a week. He said it's funny. That's all the conversation I had with him. This conversation was in West Washington Market the day before the conversation in my place of business.

The next day, when they came into my place of business, they did not do anything else besides telling me not to sell to Liebowitz. My shochet was killing that day and he kept right on killing when they came in. I don't remember whether they spoke to my shochet at all. As to this $20 a week that Hirshon asked me to pay, I paid it to Koslow for about three or four months.

I handled about eight to ten thousand pounds of poultry a week. I remember about this time two years ago, after these conversations about Liebowitz, going over to the Erie Railroad in New Jersey for poultry. I pulled up my truck to load. The weightmaster told me to pull in to load; so Manny Herbert went over to the weightmaster and told him not to load me any poultry, and the man would not

load me. That's all he said. I told the weightmaster to send the load to the West Washington Market. Then I had to promise Tootsie Herbert that I would not sell any poultry to Liebowitz.

This $20 a week that I used to pay to Sam Lipkin at the beginning, and then to Jake Koslow, always at the end of the week, on Friday or Saturday. Hirshon and Koslow asked me for more money. They wanted I should give them $50 a week. I told them I cannot afford it. I paid them $35 a week for about two months. No one else ever came with Koslow when he collected the money. Carl Firestone used to come once in a while. Koslow never came to my [fol. 462] place and asked for $50.

After refreshing my memory, I recall having a conversation in my place of business with Firestone and Koslow. I had a coop of cheap poultry, I don't remember the date, but it is two years ago. I sold it to a fellow for 45 cents a pound. Jake Koslow and Firestone came in to me and told me "You think you are putting something over on us; you are not putting anything over on us", and they went away. When I got to West Washington Market I couldn't get poultry unless I pay a fine of $25. Jake Koslow told me that. I paid the fine to Mike Lax. I got poultry after that. I never attended a meeting of the poultry dealers and butchers or marketmen. I remember Carl Firestone and Jacob Koslow came into my place of business and accused me of paying $50 to an association to fight them; that was some time in February, 1928. They came in to me and stood a little while. I said to Jake Koslow "What do you want?" He says "Dassent I come in here?" I said, "Sure the place is all yours." He stood a little while and then he said to me "When we asked you $50 a week, you cannot afford it, and last night you gave $50". The next day I could not get poultry in the market.

On one occasion Koslow and Firestone told me not to sell a butcher at 458 Howard Avenue. I said "What, that man buys poultry in my place already almost two months". They didn't say to me anything, just said I should not sell any poultry. No one said anything to me about the price at which I was selling poultry. I remember now they spoke to my shochet. After they spoke to him, this shochet would not kill any more poultry for Liebowitz.

[fol. 463] Cross-examination:

The Witness: I had a union shochet. I kept my doors locked and had the shochet kill before union hours; that is a violation of the union rules. My shochet, when he refused to *m*ill, may have said "You are trying to have me kill before union hours." I don't remember. I remember I did tell him to come there before union hours.

I met Arthur Herbert in the market with Mr. Hirshon as soon as I was handed the subpœna. I think it was the summer of 1928, the day before I saw the District Attorney. I told Arthur Herbert that I had been called by the District Attorney. He asked me what I am going to say. He did not tell me I should not say this, that or the other thing; he did not ask me to correct anything. At that time I was unfriendly with Herbert, I do not know why I went over to talk to him about it. At that time I was not having any trouble with the union about getting my poultry, no trouble of any kind. I had trouble with the union during the year 1927 or 1928 about twice or three times. I had a man by the name of Patsy working for me. Arthur Herbert called on me and asked me to arrange to have Patsy become a member of the union. That was the only man that I had. Arthur Herbert said I should have more than one man. I had an argument with him about that time. There was never any strike or any interference with my business at all. The only thing is that Arthur Herbert told me not to deliver to Liebowitz, who is my brother-in-law. I do not know any reason why Arthur Herbert asked me not to sell or deliver to Liebowitz. I do not know of any difficulty between Liebowitz and the union.

[fol. 464] Between June of 1927 and September, 1928, I saw Arthur Herbert almost every day in the week, but very seldom I spoke to him. He came into my place on one occasion and went into the back room; that was very early in the morning, long before 7 o'clock. The claim was made that my shochet was killing before the commencement of union hours. The only time there was any interference with my getting poultry was at the Erie Railroad in September, 1927, about the time of my difficulty with my shochet; that was the day after the time when Herbert came into my place before 7 o'clock in the morning and complained about the shochet killing before the commencement of union hours.

I was not able to get any poultry. The union men would not load me. I do not know who told him not to load me. With that exception, I at no time had any difficulty in being loaded or getting my poultry.

When Carl Firestone came into my place with Mr. Koslow, Koslow did the talking. Firestone did not say anything. Koslow said to me that I wouldn't get my poultry until I paid my fine. I said, "Well, I will call up my wife and pay the fine." He says, "I am going to send Mickey Lax to get it." I called up my wife and told her to pay the fine of $25 to Mickey Lax, who would come to collect it. I never had any conversation with Mickey Lax.

The time I had trouble about getting poultry at the Erie Railroad was the day after my trouble about the shochet. The Liebowitz matter and the shochet matter happened the same morning. There were two different things. The shochet was killing for Liebowitz in my place and was working before union hours. That is why they were both taken [fol. 465] up at the same time. The same day I had trouble at the railroad and that trouble was that the weighmaster of the commission men told me to load my poultry and the union men would not load it. The receivers were willing to sell me, but the union man would not load.

When I first went to the railroad I could not get any poultry. I told the weighmaster to send all the poultry to West Washington Market, and when I got to the market, Tootsie told me not to sell poultry to Liebowitz. So I had an argument and I said I would not sell to Liebowitz, and then I got the poultry. It was only that one instance altogether.

Mr. Kroppy: I move to strike out the testimony of the witness on the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

The following testimony was given by this witness at this trial:

Cross-examination.

By Mr. Perlman:

The Witness: Since 1928 I have not had any trouble in the buying or sell of poultry, nor with any union. I am now

engaged in the poultry business, wholesale and retail. I am in no combination with anybody. I do not know of any meetings that have been held since 1928. I employ union men and pay union wages.

[fol. 466] SAMUEL BERNSTEIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at the criminal trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I am in the retail poultry business in Brooklyn. I buy my poultry from Phillips & Skloot, marketmen. I bought my poultry during the summer of 1927 at Phillips & Skloot. I did not try to buy poultry anywhere else at that time for my store. I did try to buy poultry for my other store at 380 Kingston Avenue, which I owned as partner, from somebody else.

Q. What happened when you went there?

Mr. Jacobson: That is objected to as not binding on the defendants.

The Court: Objection overruled.

Mr. Jacobson: Exception.

The Witness: I went to Louis Gerber and told him I opened up a new store at 380 Kingston Avenue and I said "I want to buy poultry for that store in your place." He said "Very well, I will sell you poultry for that place." So I went in and I bought there on Thursday or Friday, and I come back Monday and he told me I cannot get any more poultry in that place. I asked him the reason why, so he told me, he says: "You belong to 880 DeKalb Avenue"; I should send my partner down. I says, "But my partner is the inside man; I am the buyer." I says, "As far as I am [fol. 467] concerned, I am the only one that will buy poultry for that store, and nobody else." So he says to me, "I am sorry, I cannot give you any poultry." So I had to send my partner down and get them to kill the poultry.

Q. Did you ever try to buy poultry from Lokietz?

A. Yes. Around December 1927.

Q. What happened then?

Mr. Jacobson: I object to that; it does not appear that either one of the men about whom the witness testified were members of the Chamber of Commerce.

The Court: Objection overruled.

Mr. Jacobson: Exception.

The Witness: I went in to H. Lokietz & Sons and Lokietz told me "Yes, I will give you all the poultry you want." We started to kill poultry there and the shochet refused to kill them. I went back to Phillips-Skloot. When I was in Gerber's place, he told me "I cannot sell you any poultry." "You have got to go back to your own place." I went back to Skloot and st-yed with him the whole time. I did not buy any poultry from Taits.

I had a conversation with Samuel Sahn some time in November, 1927. I happened to kill in New York that time, and I come back that morning from New York and he says to me "What is the idea Sammy?" So I says, "You know, Sammy, I got to make a living in this business, and I cannot afford to pay those prices so I have to go out and look for a little cheaper stuff." He says "You go back to Phillips-Skloot and we will straighten it out." Then I went back to Phillips-Skloot the next morning. I bought all my poultry there. Skloot said "We will give you $50 a week if you will buy all your poultry," meaning that they will give me $50 a week off the bill cheaper than anybody else that buys poul-[fol. 468] try, being I was a big dealer. I got $50 a week, not in cash, but off my bill, about four or five months. Then he gave me $25 a week about three or four weeks, up until about March or April, 1928. Then I got nothing. He told me I would get $50 a week off my bill, being that I was a big customer, but I have to pay the full price.

After I made this arrangement I went to Lokietz to buy my poultry. I couldn't get the stuff direct. I got it indirectly. I had to call him up and meet him half way, somewhere in the street. That happened quite often. None of the defendants ever said anything to me about the payment of a cent a pound.

Cross-examination.

By Mr. Jacobson:

The Witness: I had a retail poultry business on DeKalb Avenue in Williamsburg section, Brooklyn. The Williamsburg section is distinguished from East New York section because Williamsburg is called Brooklyn and East New York is called Brownsville. I opened another store in Kingston Avenue; that is in the Brownsville section. The butchers and chicken dealers in Bedford Heights deal with both Brownsville and Williamsburg. At that time I was dealing with Skloot from the DeKalb Avenue store and my purchases were about 10,000 pounds a week; that is a pretty big quantity in the trade. Nobody told me not to buy from Skloot. Mr. Gerber told me I cannot buy poultry from him, I personally—my partner, yes. Gerber's business was wholesale business, and retail. He was a marketman. I don't know whether he was one of the Chamber of Commerce. I do not know whether he was a member of the Retail Dealers Association.

[fol. 469] I was a member of the Chicken Dealers' Association in that section. I don't know that our association threatened to boycott Gerber if he sold goods to me for my Kingston Avenue store. I do not know anything about that. Gerber didn't tell me the reason that he could not sell me or the Kingston Avenue store was that our own Butchers' Association threatened to boycott him if he sold it. After Gerber refused to do that, I went back to Skloot. I got the $50 a week before that. When I went to Skloot I asked for an allowance of one cent a pound. I happened to meet Sam Sahn on the street one day, and I told him about the troubles I was having with Skloot. I told him I wanted one cent a pound from Skloot if I would deal with Skloot entirely. Sam Sahn said he would talk to Skloot and see if he could make some arrangement for me. He came back and said that the best Skloot would pay would be to give me half a cent a pound. I was then buying about 10,000 pounds a week, and a half a cent a pound amounted to about $50 a week. That is the $50 I got. I considered that Skloot thought it was worth $50 a week for him to keep my trade in one place.

While Skloot was giving me this money and trying to confine my trade to his place, I was going to other places

and buying goods, but not for my place. I was talking about Kingston Avenue, that is not my place. This arrangement was made before I opened the Kingston Avenue place, and I went to other places to buy goods only for Kingston Avenue. I knew that Skloot was selling me on credit 10,000 pounds of goods a week and that he wanted to keep tab on what I was doing. I had been a slaughterhouse man at one time. I closed the place and made a settlement with my creditors.

[fol. 470] By Mr. Kaufman:

The Witness: I was president of the Williamsburg Retail Poultry Dealers Protective Association during 1927 and 1928. As president of that association, I attempted to cooperate with the Chamber of Commerce a couple of times. I don't remember ever asking the Chamber of Commerce to attempt to request different members to stop selling merchandise outside of the vicinity of their operations. I do not remember whether any such written request was made by the secretary of that association or by Mr. A. Miller, the manager of that association. I don't remember whether a written request was made by the association of which I was president, to the Chamber of Commerce that a standard price be charged all retail poultry dealers. I don't remember, because I did not sign anything. If I was signing, then I would know what I am saying. As president of the association, I did not know half the time what Mr. A. Miller, the manager of the association was doing. I did not know what Mr. A. J. Goldlang was doing; Mr. Goldlang was secretary.

I don't remember that a request was made by our association to the Chamber of Commerce that the Chamber of Commerce keep their members from selling to new retail poultry stores where they would injure patronage of stores now existing.

Redirect examination:

The Witness: I had a conversation with the defendant Sahn at the Chamber of Commerce. I guess it must have been somewhere around January or February of 1928. He called me up. I came over to the Chamber of Commerce. He told me "Sammy, you are buying all your poultry off Phillips-Skloot. We have a little trouble with Phillips-

[fol. 471] Skloot and I want you to do me a favor and do not go tomorrow morning to Phillips-Skloot; that is, you go to Lokietz' place and buy your poultry." So the next morning, I went to Lokietz' place and bought my poultry, and the same afternoon Mr. Sahn called me up again and says to me "Tomorrow morning go back to Phillips-Skloot". I went back the next morning to Phillips-Skloot. Sahn told me he has got a little trouble. He said about money matters; I do not know what it was. It was some money matters, he said; he did not want to pay a cent a pound to the association. At the time that Taits went out of business I did not have any conversation with Skloot about it. I had no conversation with Sidney Rosenstein or David Kaufman.

Recross-examination.

By Mr. Jacobson:

Q. Is it true that at a meeting of your association, Charles Goverman and Joseph Hasenfratz said that they wanted to have a strike called upon Mr. Hirshon because Mr. Hirshon charged one cent a pound more than all the other chicken dealers?

Mr. Oseas: I object to that.

The Court: Objection sustained.

Mr. Jacobson: Exception. I submit, if your Honor please, the testimony may be competent as contradicting the testimony of this witness.

The Court: It may be, as far as that is concerned, but call this witness as your own.

The Witness: When I signed that affidavit, Mr. Samuel Sahn in the Chamber of Commerce asked me if I had any trouble at that time, before I had the store 380 Kingston Avenue. I said no, I had no trouble there, and I bought poultry wherever I please. He asked me if we had any kind of a meeting about calling a strike on Mr. Hirshon, and I said yes, we had a meeting. When I made these statements they were true at the time. In my place, I never [fol. 472] had any trouble, until I opened the Kingston Avenue Place, I had trouble. My partners had trouble. In my place, DeKalb Avenue, since I am doing business I never had any trouble at all. When I signed this affidavit

I was discussing only DeKalb Avenue at that time. I told them exactly what happened and they read the affidavit off to me and I said "Yes, it is true". They didn't mention the other place, just DeKalb Avenue.

Mr. Kroppy: I move to strike out the testimony on all the grounds previously urged.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 473] Louis Sorkin, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given at a former trial held in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality:

Direct examination:

The Witness: My business is live poultry under the name of B. Taits, Inc. I am a stockholder and secretary of B. Taits, Inc. B. Taits is president and treasurer. I have been connected with B. Taits, Inc., since about March, 1927. Before that time I was in the same business under the name of Bernstein & Sorkin. I attended two meetings of marketmen during the summer of 1927. I think Benjamin Danziger went with me. The names of marketmen who attended are Hirshon, Mintz, A. Franzel, Sam Powell. I cannot recollect any more. I don't know whether Kadin or Koslow was there. Morris Gordon was there at one meeting. There was no regular chairman. The chairman both times when I was there was Morris Gordon. Those two meetings were held in Grables Hall, in the Brownsville section. Most of the marketmen of Brownsville were not there. There were about twelve at those meetings. I can't remember everything that was said. It was said that our business was no good, was not good enough, and we were trying to better it. The way it should be bettered was to take a better price, cut down expense. That is about all I can remember. There was no result of that meeting. What was said was we should try to cut down expense.

With reference to these Brownsville meetings, I remember Dave Hirshon, Morris Gordon, Koslow, Abe Franzel,

[fol. 474] Kadin and Resnick were present. No others that I remember. It was said that we should contribute a cent a pound towards the association from every pound of poultry we sold. We spoke about credits, that we cannot get our money in from the customers. With that money we were paying for protection from the union. I mean that money was to be used to fight the union in case it was necessary. I don't know of any other expense.

I only paid a few dollars. I didn't pay a full cent. I handled about 20,000 pounds of poultry a week. If I handled that at a cent a pound, I would pay about $200, but I didn't pay that much. I just paid $75 twice, and once during a holiday I paid $185. I paid three times. Nothing was said that I recall at this meeting about what this one cent a pound was to cover besides the protection from the union. I heard Hirshon talk at these meetings. He said the same thing. He did not say anything about hiring men with that money. The leaders of the association were going to protect this business for us. They didn't tell us how. I asked Hirshon, and he said there is plenty of expense on it, and what's the use of knowing. When I refused to pay, I spoke to Koslow and Sam Lipkin. They collected the money. I made my arrangement to pay $75 a week instead of a cent a pound with Hirshon a couple of weeks after the first meeting. If I didn't pay a cent a pound Hirshon said he would stop me from getting poultry. I paid the $75 a week for three weeks. Never paid anything after that. I once paid $185 to Hirshon during the holidays, around Easter, 1928. I refused to pay it at first because I couldn't afford, and he said if I don't pay in I won't get any poultry. After I paid the $185 I got poultry. Before I paid the $185, [fol. 475] I was stopped about four days I believe. The first time that I stopped paying I went to the West Washington Market; that is, I sent Mr. Danziger to the West Washington Market. I had no poultry. Maybe for another day, until I paid again. I believe I paid Koslow. My shochtim were ordered not to kill the poultry that day. Charley Herbert, the delegate, ordered them not to kill the poultry. The workmen didn't show up to work, and stayed out until I paid up again. While my own workmen were out, they sent a different set of men. They sent Julie Rosenstein and Aaron Weisler and Charley Gershowitz. They didn't do the right work, what was necessary, what was told them to do.

On that Sunday morning, right after these men came to work, they came in late and when the orders were killed two of the men that were delivering the poultry, took their time. Instead of delivering the poultry in a short time, like fifteen or twenty minutes, they took their time and stayed away from the place for about two hours. Then they came back and went in the restaurant and stayed there the rest of the time. They did the very same thing every day. They stayed with me two weeks. I complained to them about the way they were doing their work. They said that's the way they are doing their work and they were ordered that way to work. That's all they answered me. I believe Charley Gershowitz said they had other bosses. I was there the following Wednesday when Mr. Goverman and Mr. Kessler came in. When we started to kill the poultry, Mr. Kessler walked inside and told Mr. Goverman that his tires were cut in his car. When he went out, he started to holler, "Who did that, it is nobody else but the workmen who did that", and Mr. Kessler also objected to this and I do not [fol. 476] remember which one of the workmen walloped and knocked Kessler down. I did not see Firestone anywhere around at that time. I was inside. When Kessler and Lipkin came around, they simply asked for money. I sued the Chamber of Commerce. During that suit there was a conference held in my lawyer's office. There were present David Hirshon, Samuel Sahn, Benjamin Simon, the supervisor. I don't remember anybody else. My lawyer was there, Mr. Nizer. There was no lawyer representing the other side there.

Cross-examination.

By Mr. Jacobson:

The Witness: There were some payments made by my concern at $75 a week. I made that payment twice. Then I paid $185 on one occasion. I don't remember the dates. The Taits firm started business the early part of 1928. With reference to that time, the payments of $75 a week must have been some time in April, 1928. The payment of $185 was made the end of April, the same month. I got trouble when the firm was Bernstein & Sorkin. I was present at the meeting in June, or May, 1927, when they talked about credit, cannot get money from customers.

They were talking about the customers' credits, butchers and dealers, to whom the marketmen sold. The condition which had existed up to that time which occasioned this talk was very bad. It is existing yet. It existed before that time. Ever since I remember, and I am in business for thirty years. These butchers made the credit so bad. They took merchandise and when we came to them for money they ain't got — to pay.

There had been talk before May and June about these very things. They had been calling meetings before May. The same kind of such talks had been going on from time to time for a number of years. At all of these meetings [fol. 477] we were discussing not to sell to a customer that owes money in a different place. If he owes money he should not be sold. Nobody was told not to sell a man who did not owe any money. It was just a question of not selling some one else's customer until he paid the other man. There was some discussion about butchers closing stores and moving to another district. Some butchers used to do that. They used to close up the store and open a store somewhere else under a different name. These butchers were described by the marketmen by the number of the store, so that when a butcher moved from one district to another, all he did was to change his number in a different district, and that was the condition which we discussed. I know what run-around trade is. People that buy all over.

At these meetings it was said that the marketmen should not buy too much stuff for himself—not carry a big stock. The reason is that the poultry shrinks after it is left over—dries out. There was talk about members submitting a list of regular customers, so that it could be decided at any time which chicken dealers were regular customers between marketmen. And a new arrangement was talked about, taking some customers from one marketman and giving them to another marketman. We got some. B. Taits got some of those additional customers. I do not know how many, a few. The marketmen who got additional customers were supposed to pay for those to those marketmen who gave them up. I think that is what our $75 a week was for. I do not know. We actually got those customers and sold to them. Our firm sold about 20,000 pounds a week. Our operating cost was about $850 a week.

That amounted to four cents a pound. It ran as high as five and six, according to the shrinkage, and it was with-[fol. 478] out bad debts. Before 1927 I did not have big losses because I was new in the business then. The shrinkage averaged about two or three cents a pound. It cost us then six or seven cents a pound to do business. We started business in the morning at seven o'clock. The union fixed the time at seven o'clock. Before that time we started business at five o'clock, and the marketmen themselves actually went in their own places of business and put on working clothes and aprons. They just prepared the poultry for sale. They worked sometimes to eight o'clock in the evening.

At these meetings there was discussion amongst marketmen who were present that the unions were becoming too strong, and that the marketmen were going to try to break the union. That was almost at every meeting mentioned. And by unions I refer to the helpers' and chauffeurs' union and the shochets' union. There was no talk as to how the marketmen would break the union. I do not know whether the Chamber of Commerce also wanted to break the union. All we were concerned with and the only meetings we had were with the marketmen over in Williamsburg in Brooklyn. And so far as the association in Williamsburg was concerned, it was their hope to be able to break the union.

We were going to raise a penny a pound for the purpose of breaking the union. That penny a pound was to be paid to the association. I do not know how the association was to use this penny a pound for the purpose of breaking the union. No leader ever told me. I never heard at those meetings that the marketmen were going to employ gangsters to operate against the union. All I know is that a penny a pound was to be collected for the purpose [fol. 479] of fighting the unions. There was no talk about employing gangsters or guerillas against the union.

Redirect examination:

The Witness: I was still attending meetings in April, 1928. As to these payments of $75 a week, I said I paid them to the marketmen who gave me the customers. I know that because I got the customers from other marketmen. I paid the $75 to Koslow and Lipkin. I do not know what Koslow and Lipkin did with this money. I do not

know whether they gave it to any marketmen. There was nothing said about employing gangsters at all. I am sure. I said that men were to be hired to protect the trade for this $75 a week that I paid in order that they could not buy elsewhere.

Recross-examination.

By Mr. Jacobson:

The Witness: We were told not to sell to strange customers. Even if they did not owe any money. Some members of the association said that.

By the Court:

The Witness: We were not to sell to anybody who did owe us money. Koslow said that I should not sell to any customers from other markets even if he paid his bill. I did sell him. I asked him first whether he paid his bill. He showed me that he had paid his bills. I sold him, anyhow. I worked for Koslow before I became a member of the firm of Bernstein & Sorkin. I was his bookkeeper. I don't think Mr. Koslow discharged me. Maybe he did. I don't remember.

Mr. Kroppy: I make the same motion to strike out this testimony.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 480] WILLIAM COOPER, a witness called on behalf of the Government, having first been duly sworn, testified as follows:

The following testimony, given by the witness at a former trial held in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I have been in the poultry business, selling slaughtered poultry, about eight or nine years. My place of business has been at 238 East 121st Street for the

last three years. In June of 1928 I had two places, one place at 238 East 121st Street, and the other in the Bronx. I was getting my poultry in June, 1928 from Plotkin & Sorkin. I was with them for three years, until the 1st of July, 1928, when they closed up. At the time they closed up I had a conversation with Mr. Decker, a workingman from the market of Decker & Glass. He was to me on Friday and said to me "Mr. Cooper, your marketman is going to close up". He said would I buy my stuff when he closed up. "All right, when he close up I buy off you stuff." The next Saturday, I go to Mr. Plotkin & Sorkin's market, and I say, "Mr. Sorkin, where is your stuff?" He says to me "I ain't got any stuff; I sent you stuff." That was what he told me. They told me that they had no merchandise for me, so I says "Never mind, I will go to the market and get my merchandise somewheres else". I went to Glass and he gave me merchandise in the evening; that was Saturday night. Monday, I slaughtered my merchandise and Glass sent me some more merchandise to both stores. Monday, three o'clock, I received a call from Mr. Glass. He ask me that he has no stuff for me. He said the Cham-
[fol. 481] ber of Commerce does not permit him to give me merchandise, "otherwise they will revoke my license if I give you merchandise; they will take my employees away if I give you more merchandise". At first he spoke to me over the telephone and then I went to the market and spoke to him at the market. I came home and found my son at home, and he gave me a card to call for merchandise in the market the next day. I went to the market on Tuesday morning of Louis Peltz, the man whose card my son gave me. I came to Mr. Peltz, and told him that I am from 121st Street. So he informed me that he was at my house on the previous evening and left a card for me. I asked him what the price of merchandise is and he informed me that he will put it on the charge. He did not tell me the price. I got poultry from him three days. He then told me to pay cash, so I said "I cannot pay cash". He informed me "Wherever you buy merchandise you will have to pay cash". He informed me that wherever I buy merchandise the other people will give him the profit. I said I wanted to go somewheres else. He said "Go ahead". I went to Glass and he refused to give me. He said "I will have

trouble and the Chamber of Commerce will deprive me of my chauffeurs and other employees."

I also went to Louis Spatz and he refused me. At that market, I found Charles Gershowitz. I ask him "Why don't you permit me to get merchandise from Glass?" He says, "You belong to Louis Peltz." I asked him "Why don't you allow me to get merchandise, do you want to cut my throat?" Charles Gershowitz took me in his car and took me to Mr. Glass and instructed him to give me merchandise and I got merchandise there. During this period, I tried to get poultry from Rifkin & Wolosin, 155th Street and Madison Avenue. He said "I haven't got it". I also [fol. 482] tried Mr. Berkowitz in Mount Vernon. I slaughtered for three days and then I returned on Saturday and asked for more merchandise and he said no. He said they stopped off his car on the tracks. I was not asked for receipted bills in any of these places.

Cross-examination.

By Mr. Jacobson:

The Witness: I bought from Plotkin & Sorkin until they stopped doing a wholesale business until July 1st. Then Decker came to me and asked me to buy merchandise. At that time I did not owe Plotkin & Sorkin any money. After two or three days Glass refused to sell me any more. Then Mr. Peltz called at my store and left his card and I went to see him. He did not tell me to pay cash when I took out the stuff. After two or three days he asked me to pay cash. I owed him for those two or three days' business and I paid him. Then I went to Decker & Glass and to Spatz' place. I saw Gershowitz. I started an argument with him in the place and he threw me outside. Then he took me over to Glass. I said to Spatz "Mr. Glass wants to give me for credit". That was the argument. Gershowitz took me outside and told me not to argue. After the argument he took me over to Mr. Glass to get my stuff.

Mr. Kroppy: The same motion to strike out, on the same grounds.

The Court: Same Ruling.

Mr. Kroppy: Exception.

[fol. 483] HARRIS KESSLER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

(The following testimony, given by the witness on a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competence and materiality:)

Direct examination:

The Witness: I am in the poultry business, about seventeen or eighteen years, in Brooklyn. I buy killed poultry. I bought my poultry in the summer of 1927 from Sorkin & Bernstein. How much they charged me, so much I pay. They don't ask me how much I like to pay. I cannot tell exactly how much was the market. They don't tell me the market price. In the summer of 1927, one time I tried to buy from Sam Powell. I go in his market for spring chickens. He tells all right, you can take, and I come over for the spring chickens, and the shochet refuse to kill for me the chickens. I do not know the name of the shochet. He is still in the same place, the same man in the same market. I did not get any poultry that day from Powell.

In the winter in 1927, I came over to Mr. Sorkin. I want small poultry, three to three and a half pounds. Sorkin said to me "Kessler, go over to the market and find out a place where you get small poultry, and I say to the man he shall give you the poultry". And I go from Sorkin's market and I pass Dave Hirshon's market. Hirshon just came out from the car and asked me "Kessler what do you want?" My boss hasn't got for me for tomorrow and Wednesday night small poultry. I need Friday morning [fol. 484] small poultry. He said "Go over the market, there is small poultry, and pick out coops that are not taken". I come to Hirshon's market, and I pick out the coop and I marked it, and he said "All right, you come Friday morning and you get it", and I passed by Sorkin's market and I say to Sorkin "I got it". He said "From whom did you get it?" I told him Dave Hirshon. He said "All right," and I come Friday to Dave Hirshon's market, Mr. Hirshon said "I am sorry you cannot get the poultry". I must go back to Sorkin and take poultry, six, seven, eight, nine pounds apiece. This was on a Friday, and I

must sell to the people cheap, and women came to me and ask for small chickens, and I haven't got it, and I must give them a chicken that cost me $1.75 for 75 cents. I lose on these chickens $4.00 and I must give it for any price they give me. I deal after that by Sorkin & Bernstein.

I bought from Bernstein & Sorkin the whole time until Taits came into the market. Sorkin made him for a partner. He said "Well, I am going to break the corporation, I am going to give poultry to everybody at all that comes to the market". On Friday morning, I go to the market and mark up my poultry for Sunday and Monday. When I come to the market, the market was closed. By the market there stood Sorkin. I said "What are you going to do now?" "Well, Kessler, I am sorry, you must go back to Hirshon". I saw there the same coop that I had marked for purchase at Sorkin's place of business.

While I was buying from Taits during April, 1928, there was a disturbance there one day. That was April 25th in 1928, just in the morning, and I got my poultry killed and the poultry lay by the door of the market and I stood [fol. 485] there until they delivered the poultry to my door. Charles Goverman was in the market. He killed his poultry. I stood by the door until they delivered my poultry. Charles Goverman's machine, the front wheels, the tires were cut. He said he was going out to see Carl. He said "Carl, you are responsible for my machine". Carl was standing at that time on the sidewalk, a couple of feet from the machine. I would know Carl if I saw him again. (Defendant Firestone arose.) That is the same man. Goverman said "Carl you are going to be responsible for my machine". Then comes out Arkie Weissler and another fellow was there. (Witness identifies two defendants.) They give a good licking to Charles Goverman. They punch him and the blood runs from his mouth and all over and I came over to the market of Mr. Taits and Sorkin and say, "Look what they doing to Mr. Goverman." This fellow took me by the neck and pulled me up and st-uck me to the ground and tramped with me with the foot like mud, and then comes a policeman. They arrest him and it comes to the court but there is nothing.

B. Taits gave up all business after Easter in 1928. The whole time I bought from Mr. Taits and Sorkin, but after Taits closed I bought of Mr. Hirshon. I try to buy at Sam

Powell. Sometimes Taits cannot get the poultry from the market. Sometimes he said they stopped him the poultry and he sent me to Morris Hellman. I went to Hellman and got poultry. Before they start the corporation I bought from Mr. Hirshon. After the corporation I didn't buy from Hirshon. Then I was by Taits. I couldn't go any other place. Hirshon wanted to give it but Sorkin stopped me from getting it. After Taits went out of business I went back to Hirshon; that was in 1928. After Taits went [fol. 486] out of business Hirshon sold me.

At the time that Rosenstein and Weissler struck me, they said to me "If you go to tell anything, sometime you will be found dead on the lot. Keep away from this place". They said to me "Don't buy of Taits. Keep away from there".

Cross-examination.

By Mr. Jacobson:

The Witness: Then Taits was closed, Taits said to me "You must go back to the place where you came". While Taits was in business, I didn't go anywhere else. Taits closed the market in May or June, 1928. Morris Hellman, I was by him when Taits did not have poultry. Maybe sometimes I bought from him but not at this time when was the corporation. I am in the business over eighteen years, in the old Brownsville market. I don't deal always with one man. Maybe I bought from Morris Hellman three or four years before. I bought from Hellman because Taits did not have poultry. When Taits was closed, I go back to Hirshon because I cannot go any other place. They send me to Hirshon and I buy now from Hirshon. At the same time I was dealing with Taits I was buying from Hellman when Taits didn't have it. When I went to Hellman he sold me poultry. Then it was free for everybody, because Taits comes in and the market men in Brownsville say the market is open for everybody. How long a period of time it was that I deal with Hellman, I cannot tell you. When Taits did not have poultry, I only went to Hellman and Hellman sold me. When Taits came in the market he advertised his market is free to everybody who comes to get poultry. Everybody was free, but the only place I went to was Hellman.

[fol. 487] Mr. Kroppy: I move to strike out his testimony on all the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 488] Morris Schultz, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

The following testimony, given by this witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competence and materiality.

Direct examination:-

The Witness: I am in the poultry business, selling slaughtered poultry on the East Side. During the summer of 1927, I bought from the Pitt Street Poultry Corporation. I have been buying from them since I am in the chicken business, about eight years. I tried to buy poultry from Chast about October, 1927. I killed my stuff at Chast, and then Meyer Weiss came in and told me I got to go back to the Pitt Street Poultry Corporation; he took me by my arm and he was going with me to the Pitt Street Poultry Corporation, to the market. He told Isaacson "Here is your customer back". "I brought you another customer". Then I killed for two days, Monday, Tuesday and Wednesday; and Thursday morning, when I came to kill my stuff, the shochet refused to kill for me. I asked the shochet "Why do you refuse to kill my stuff?" And he said "I got an order I should not kill for you". Then I went over to Isaacson of the Pitt Street Poultry Corporation, and I asked him why he did not give me stuff and he said to talk over with Meyer Weiss, that Meyer Weiss said I got to go back to Chast because Chast wants me back with him. I said I would not go. He said "Then you will have to close up your store". They would not sell me stuff. Then [fol. 489] I closed up my store and on Thursday and Friday I was closed. Then when they seen that I close my store, Isaacson called me back and gave me $50 for two days what I had closed. Then I went back to Isaacson and have stayed there all the time.

Others who told me to go back to Chast were Meyer Weiss and some of the boys. I don't remember who they are. I just seen them once. Isaacson charged me at this time eight or ten cents above the market. I spoke to him about the price he was charging me. He said "I got to give away a penny to the boys." He says he has got to give away a penny or two in the Chamber of Commerce with the boys. I seen him pay money. He told me some of the names—to Louis Weidberg and Charles Mirotznik. When he mentioned their names, he says he has got to give away the money to the Chamber of Commerce; he has got to give for customers, he is holding customers."

The following testimony was given at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am still a butcher. Since 1927 I have not had any trouble of any kind. I know all the other butchers in the business. I never heard since 1927 of any of them having any trouble.

Redirect examination.

By Mr. Rice:

I had trouble in the fall of 1927, but I didn't have trouble in 1928. I have not heard of anyone having trouble in 1928. I am on the East Side Manhattan. I don't know that collections were being made throughout most of 1928. I stayed with the Pitt Street Market throughout 1928. I am through with them.

[fol. 490] I am not a market man, and therefore, any collections that were made among market men, I would not necessarily know about it, or what happened at their meetings.

Mr. Kroppy: I make the same motion to strike out the testimony of this witness on all the grounds previously urged.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 491] MAX KRADA, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I am a chicken dealer, selling slaughtered poultry in Coney Island, for about eight months. I did not accompany Mr. Mornick on any occasion when he went to New Jersey to buy poultry, but I did accompany him when he went to buy poultry from Bass in Brownsville. The first time we bought merchandise, the second time we could not get it. Herman Berman and another man, I do not know who he is, watched and followed us.

I was in business the whole year, from 1927 to 1928, the summertime. During the time I was in business in 1927, I bought poultry in Brooklyn, from Joe Reimans. The last time I bought from Harrison; also from Berman and also from Morris Gerber. That is all one market. During that time, I tried to buy from Mr. Bass a couple of times. That was the occasion on which I said we were followed.

Cross-examination.

By Mr. Jacobson:

The Witness: I had been working for Beck for six months before September. I had a store in Bensonhurst with a partner for about two months, and then we gave up the business because I had trouble with the partner. He stole from me. While I was in business for myself I was dealing with Harrison and with Gerber. They were in two different markets. I got poultry whenever I wanted in Harrison's but not in Gerber's. I was also buying from Gerber the last [fol. 492] time when there was no more corporation. Harrison sued me for the balance of a bill I owed him and I settled with him afterwards.

Mr. Kroppy: I make the same motion to strike the testimony of this witness out, on the same grounds.

The Court: The same ruling.

Mr. Kroppy: Exception.

[fol. 493] SAM RUBIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to its competency and materiality.

Direct examination:

The Witness: I am a butcher in Coney Island. Before January 1, 1928, I was located in the Bronx. Between the summer of 1927 and January, 1928, I bought from Webster Poultry Company. I went away from them and tried to buy poultry from a market on Lenox Avenue and 139th Street; I do not know the name of the market. I killed there one day, and the next morning I came there and they told me not to get any more, that I could not kill there. At that time I went down across the street from the Webster to the Butchers' Market, they called it. They told me they were sold out and they ain't got any poultry for me. The Webster was charging me at that period high prices, nine, ten and twelve cents above the market. Then I sold the store and I came to Coney Island. I first went to the Kings Poultry Market. The owners of it were Horowitz, Rosen Kassoff and Litwin. That is Mr. Kassoff standing there.

When I came down I did not know anybody, but their bookkeeper came down to my place and I told him "I do not want to start up in that market, but I know a dealer in Brownsville, a man by the name of Morris Gordon. I went to him once in a while." So this bookkeeper told me that I do not have to go to Brownsville while I am in Coney Island, that he will give me poultry for five cents a pound above the market. I killed there for a short time while [fol. 494] they charged me five cents and then they charged me nine or ten, maybe more than that; I don't know. I went away from there and started to get my poultry from Bass in Brownsville. I got it for a short time and then he didn't get any poultry, so I had to go away from there. He didn't have any fowl and I go to the Withers Street Poultry Market. I do not know the names of the owners. I killed there a little while and then one morning two boys came in there and they said the shochet started to kill before 7 o'clock. When they came in was about maybe five after seven. I didn't have a watch with me that time. One, Abe

Newman, I know, and the second one I do not know. He is sitting there (identifying the defendant Newman). They told the shochet not to kill for me. They claimed he started killing before seven. They called me up that afternoon and told me that they could not give me poultry because they did not get in the market.

Then I went to Brownsville, to Aswolinsky's market. The man I think I saw there was Morris Aswolinsky. He gave me a few fowl and he said he cannot give me any more because they will not sell him any more. I tried some more places. I do not know the name of them. Some of them said they were sold out and some of them said they can't give me. I don't remember. It is two years already.

I had a conversation with Newman only at Kings Highway Market. I came down to do killing one Thursday and I did not kill enough, so he says "Aren't you going to kill any more?" and I said "No". I said "I cannot stay because one of the workingmen once hit me and I do not want to kill there". He said "You had better do it; I will see that everything shall be O. K. with you". But still in all I went away a few days and I found out that I cannot stay [fol. 495] there and I had to go away again. He said to me that he is going to straighten it out I should not pay more than six cents a pound, but then I still paid more. He told me not to go away, that I would stay there and kill. I said I would not stay there any more; I am going to go out and get my stuff. He said "Do not look for trouble", and I should stay there. I came in there on Thursday morning and I killed there a little bit poultry. He said "What is the matter, that is all you kill on Thursday?" I said "Yes, I got to get my poultry cheaper". He said if I am going to go somewheres else, that he will stop me from killing.

Cross-examination.

By Mr. Kaufman:

The Witness: I saw Newman first in the Kings Poultry Company. I spoke to him at that time, something, friendly, but I don't remember that. About a month after I saw him in Kings Poultry, I saw him at the Withers Poultry. They came in and said to the shochet "You cannot kill before seven," and he should stop killing, and they took him off the job. They asked me what I am doing there and I said "I

am killing here." They asked me "Why do you not go back where you killed before?" and I said "I am going away now." I do not know whether it was Newman that stopped the shochet or the other man. He told me there he was going to try to fix me up at the Kings that I should not pay more than six cents a pound; he just offered to do it. I said "Go ahead," and then they sent me away to different markets. I have told everything that I had to do with Newman in connection with these transactions as far as I remember. I don't remember speaking to Kossoff, because Kossoff used to be in the market; he was buying in the West Washington Market.

[fol. 496] Mr. Kroppy: I make the same motion with regard to the testimony of this witness, on all the grounds previously stated.

The Court: The same ruling.

Mr. Kroppy: Exception.

[fol. 497] PETER BIRNBAUM, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I am in the poultry business, associated with Morris Jauvitz and Isidore Spieler, as the Junius Live Poultry Market for two years. About June, 1928, I had a conversation with Tootsie Herbert with regard to taking on union men. He says I shall take on union men or, if not, he will not let me do wholesale business. I was doing that time a wholesale business and had about ten or twelve butcher customers. I was selling a week about ten or twelve thousand pounds of poultry. I was buying my poultry at West Washington Market and the terminals of the New York Central and Pennsylvania Railroads. When Herbert asked me in the summer of 1927 to take on union men, I told him I cannot afford it, because I was a union man myself. I did not have any union men working for me at that time.

A little later, I attended a meeting of the Chamber of Commerce. Those who were present at that meeting were the supervisor, Ben Simon, and a lot of marketmen, Hirshon and Sam Sahn, Morris Gordon, Franzel. I think Dave Hirshon was chairman of the meeting. He says that we shall find out what butchers owe money of them and everybody that shall get out of the section, and that butchers that owe money, they should not try to give them some stuff because they owe a lot of money. That is why butchers owe me a [fol. 498] lot of money. At that meeting it was said that the many butchers in that section owe money and not to give them stuff. He says we shall be careful because the business is going to the ground. Butchers are taking merchandise and not paying for it. We should keep together and maintain the Chamber of Commerce, and that from coops that we take we shall pay ten cents for a coop to maintain the Chamber of Commerce. He said that retailers shall not keep any butchers because they did not know what butchers are, but the butchers shall be left for the wholesalers, and the retailers shall take care of the retail customers. He did not say who should be wholesale and who should be retail, but I had a few customers and he offered me $150 a week if I should sell the customers. It made no difference. I could sell them to anybody, to Dave Hirshon or any of the others. The customers were transferred by my telling them I have no merchandise; you have to go over to Dave Hirshon or to Morris Gordon and get merchandise there. They both told me to send my customers to them because they bought them from me and paid for them. When I say I had ten or twelve customers, I don't mean they are the same people all the time. At the time that I made this arrangement with Hirshon and Gordon, I don't remember who were my customers. Dave Hirshon and Morris Gordon said what customers were good for the money and they took them over. They paid me $150 a week for about three months in the summer of 1928. Sometimes one paid and then the other at the office of the Chamber of Commerce. After I sold these ten or twelve customers, butchers came and tried to buy from me. I did not sell them. Nothing was said to Hirshon or Gordon about not selling these other butchers.

I had some conversations with regard to taking on union [fol. 499] men. I did not take on any union men. I got poultry at West Washington market all the time. Only when I

did not want to take on any union men, then it was stopped for about three or four days. I was stopped before I started receiving this $150 a week. After I made these arrangements with Hirshon and Gordon, I did not have any trouble in getting poultry. During these three or four days that I could not get poultry, I tried to get it from the marketmen, from friends in West Washington Market and the Lackawanna Railroad in New Jersey, but the workmen did not want to load it.

I had a conversation with the defendant Dave Kaufman that I should take in union men. This was at the time when they stopped giving me the merchandise. I told him I couldn't afford it. Dave Kaufman forced me I should take the union men and to pay him $310 before the union men go to work. I mean I paid him the salaries of the union men in advance. I gave the money to Dave Kaufman himself, and I got my money back from Dave Kaufman after I agreed not to do business; that was the account I should pay before to shochtim. I then agreed not to do a wholesale business and they took them away and I got my money back. At the time this conversation with Kaufman took place, I had begun to do business with butchers.

Cross-examination.

By Mr. Sager:

The Witness: This trouble I had about the employment of union men and the conversation I had with Mr. Herbert occurred, I think, in the summertime, 1927. I had the talk with Tootsie Herbert several months before the deal with Hirshon and Gordon. I am a member of the Chamber of Commerce and was a member at the time I went up there to see Hirshon and Gordon. I did not go there to sell. When [fol. 500] I came there, they spoke and I told them I would give them up. The discussion there that night in the meeting was largely about the credit of butchers, and they were said to be very bad; it is true they are no good. That was the situation at the time I went up to the meeting of the Chamber of Commerce. Sometimes I went up there and they paid, and sometimes they did not pay. When I had to get it, I got it. Sometimes I got paid in their places also. My partners also took it. We did business as the Junius Live Poultry Market.

By Mr. Kaufman:

The Witness: Before I went into business in June, 1927, I was workman in the poultry business. I was a member of Local 167 about fifteen years, so long as the union exists. After I went into business, I did it alone. I never had any workingmen. I had some of my partners' cousins to help me out sometimes. I had two partners. One of these partners was a shochet. I knew it was against the union rules to have a boss work as a shochet in the business. I never went to the union and asked them to send me union men. Dave Kaufman saw me in West Washington Market. At the time I made a deposit of $310 with Dave Kaufman, that was to cover the salaries to be paid to the union shochet or union men. A couple of days after I made the deposit of $310, I notified the union that I was going out of the wholesale business and I would not need any union men or a union shochet. I went to the union with my lawyer and I arranged for the deposit of $310 to insure the wages of the union men who were going to work for me. I notified the union that I was going out of the wholesale business and I would not need any workingmen the next day after I de-
[fol. 501] posited the $310, and then I immediately got back my $310 after that. I did not have any employes. I knew that Dave Kaufman was treasurer of the union, and that is the reason I deposited this $310 with him. I did not have any difficulty in getting back my money.

By Mr. Sager:

The Witness: I went out and stayed out of the wholesale business as I promised, but three months after that I sold my wholesale business which I did not buy to Dave Hirshon and Morris Gordon for $150 a week and collected it for three months.

Mr. Kroppy: I make the same motion to strike out this witness' testimony on all the grounds previously urged.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 502] David Rubin, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by this witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I have been selling slaughtered poultry on the East Side for ten years. I bought poultry prior to July, 1927, all over. In August, 1927, I bought from the Pitt Street Poultry Market, Simon Lepoff, Isaac Lipkin, Sam Isaacson, Abraham Goldberg—four partners run the place.

After I started buying from the Pitt Street, I tried to buy poultry from Abe Wolf and Frankfater Brothers. Wolf refused to sell me and sent me back to Pitt Street. He said "What is the use of fooling? You know I can't give you stuff". When I went to Frankfater Bros., Jake Frankfater said the same thing, he cannot give me any stuff. Mr. Isaacson told me once that they told him in West Washington Market I got two butchers from the Bronx. He advised me I should not sell to them stuff. I told him "I do not belong to your association and I ain't got nothing to do with you, and whoever brings me any United States money, I am going to sell them".

Monday morning, a few guys came in at 7 o'clock in the morning to the Pitt Street Market and told Isaacson that he should not sell me any stuff. I was the first customer and I had my stuff killed already. So they told him I am selling two butchers from the Bronx. They did not tell me anything. They followed me in a car and when they came to my store, the two butchers were standing in their own [fol. 503] car. They went to the butchers and they started to hit them, and they cut two tires and went away. After that they told me they started something and they were going to finish. I didn't know the names of the butchers, or the men who did the beating. After that I got poultry from the Pitt Street Poultry Market.

I went to Charlie Mirotznik on Water Street. I got poultry there. Sam Lipschnitz sent me down to kill poultry there because there was not any in Pitt Street. When I got there, Charley Mirotiznik called up Pitt Street and they had a conversation. Then I started to kill stuff and I killed there maybe about twenty coops and then I did not kill more. So Charlie Mirotznik went in the office and he came

up and told me they called him up from Pitt Street, and Samuel Lipschitz told him that he should not kill any more poultry, that they had a load of poultry in there and he said that I should come back there; they stopped killing for me.

When I came in the Pitt Street Market on August 2, 1928, I found there Louis Weidberg and Charley Mirotznik, Tootsie Herbert and Charlie Herbert. There were a few other men, but I do not know who they were. Louis Weidberg asked Sam Isaacson for a thousand dollars and he refused to give it to him, and then Sam Lipschitz signed it and gave it to him. After, when Louis Weidberg went away, Sam Isaacson said "There is no use fighting against us because you never will win. You see, they come in and we have to give to them whether we like it or not". I seen every week the same thing. I don't recall how many payments Louis Weidberg got. I only know they used to give Max Rosen and Louis Spatz and Abraham Franzel from Brownsville. I spoke to Hirshon about my difficulty in [fol. 504] getting poultry. He told me he is too busy, he cannot bother himself with other people's troubles. I seen him in West Washington Market quite a few times.

Cross-examination.

By Mr. Jacobson:

The Witness: Isaacson told me I should not sell those two butchers any stuff, because they got their own troubles in the Bronx. I did not understand that Isaacson was making any threat to me or anything like that. He only advised me. Isaacson did not say he had anything to do with that matter, nor did he say that he would not sell me if I sold these butchers or anything like that. I didn't know they were coming from the Bronx. I told him they got their own union troubles in the Bronx.

I went to the Pitt Market three or four times a day every single day. I saw Isaacson pass a check for $1,000 to Weidberg. I saw Simon Lepoff and Isaac Lipschitz sign a check. I did not see the check. Mr. Isaacson told me "I just gave to Louis Weidberg a thousand dollars". I didn't hear what he said or anybody said to him. I saw Lipschitz sign the check.

At the time when Louis Weidberg used to collect the money, it is known that he used to collect for Kastein also

some money; he was a partner at the time of Julie Kastein, who was a commission merchant. Weidberg used to collect the bills for Kastein & Weidberg. On Sundays, I used to see coming in with Louis Weidberg, Max Rosen, Louis Spatz, Abraham Franzel, sometimes Charlie Mirotznik also. The only man I saw collecting was Louis Weidberg and that was during the time he was in partnership with Kastein. I never saw any check written out or handed to anybody else, for Spatz, Rosen or Franzel. Nobody ever told me they paid any money to them. I only saw them come into [fol. 505] the market on Sunday morning.

Cross-examination.

By Mr. Kaufman:

The Witness: At the time that I saw this check given to Mr. Louis Weidberg, that was the time I saw Charlie Herbert and Tootsie Herbert in the place. I found them there. Weidberg was talking to the marketmen, Simon Lepoff and Isaac Lipschitz. Tootsie Herbert and Charlie Herbert were talking to their own boys; they were not talking to the marketmen; they were not in the conversation that Weidberg had with the marketmen. They just happened to be in the market at the same time that Weidberg was.

By Mr. Jacobson:

The Witness: I told Hirshon I can't stay in that place, I would like to go in another place and they don't give me stuff. He was in West Washington Market. I just happened to meet him there. He said he couldn't mix in it.

The following testimony was given by the witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I did not buy live poultry at the West Washington Market. I sold all slaughtered poultry to butchers and at retail. I never paid any money to Louis Weidberg. These payments to Louis Weidberg were made

some time in 1927. Since 1927, I have not heard of any trouble in the poultry business, or of any payments being made by anybody. I have not had any difficulty in getting poultry since then, and I have been buying wherever I wanted to buy. Nobody has interfered with me in any way since 1927.

[fol. 506] Redirect examination.

By Mr. Rice:

When I told Mr. Kaufman that there was no trouble after 1927, I meant this trouble continued until just prior to the indictment. I do not recall that a new organization called the L. W. Credit Association was formed on the East Side in the summer of 1929. I don't know anything about that. They never bothered me then. I know after the indictment I got stuff all over.

Recross-examination.

By Mr. Kaufman:

The Witness: I do not know what that check of $1,000 from Lipschitz from Weidberg was for. I did not hear any conversation, and all I know is that Lipschitz gave Weidberg a check for a thousand dollars.

It was a year or a little less before the trial that there was no difficulty and that I was not interfered with in getting poultry. To tell you the truth, it is so long ago, I don't remember the date.

Mr. Kroppy: I make the same motion to strike out the testimony of this witness, on all the grounds previously urged.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 507] Harry Starr, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to

stipulation, subject to objection and exception as to competency and materiality:

Cross-examination:

The Witness: I am in the poultry business, selling slaughtered poultry. I am in that business the third year at 967 East 17th Street. During the summer of 1927, I began to buy from Goldstein & Gross and I bought there for two or three weeks, and then they went bankrupt or closed up. I do not know what happened there. Then I went to A. Bloom. I killed there for one day and when I came the next day, he says "Starr, I am sorry I cannot give you any poultry no more. You got to go back to Goldstein & Siegel. You belong to them and I cannot give you any poultry". I paid Goldstein & Siegel between seven and ten cents above the market. I stayed with them about six or seven months.

I went in a couple of times to Kalman Gross. He said "I haven't got any poultry for you"; nothing else. I did not try anywhere else. I continued to pay seven to ten cents to Goldstein & Siegel about eight months; then they charged me three and four cents; that is all the time since. When I could buy where I wanted, they started to charge three and four cents.

Cross-examination.

By Mr. Jacobson:

The Witness: I began to deal with Goldstein & Gross in 1927; it was during the summertime. I dealt with Gold- [fol. 508] stein & Gross two or three weeks. During that time they charged me between seven and ten cents. Then they became Goldstein & Siegel, and they continued to charge seven and ten, about eight months, seven or eight months. I think there was a little change, about a cent or two, for just a week or two. I began in the summertime, 1927, and continued with them through the winter for about nine months. Then I went and I bought of Gross or bought anywhere. I bought from Hornstein & Spatz. I got credit from Gross. I went to Gross to buy only once. He never asked me anything. He said "I haven't got any stuff for you"; that is all. It was in the summertime. I was dealing

only with Goldstein & Gross two or three weeks in August, and in September I was dealing with Goldstein & Siegel. September was just before the holidays, just the time when the demand for poultry in New York is the biggest of any part of the year in the live poultry trade. I went to Gross and he said "I haven't got any poultry".

After I stopped dealing with Goldstein & Siegel, I killed by Hornstein & Spatz and I killed by Gross and I killed by Abe Bloom, and I killed all over. That was the end of 1928. They all sold me goods. Nobody asked me for any money. When I was dealing with Goldstein & Siegel, Gross was the only other place I went to, and that was the one time I mentioned in September.

Mr. Kroppy: I move to strike out the testimony of the witness on all the grounds previously urged.

The Court: The same ruling.

Mr. Kroppy: Exception.

[fol. 509] HERBERT FRANKEL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: Sol Frankel, Inc., of which I am president has been in the live poultry business for twenty-two years as receiver. Poultry is gathered from farms by concentrators, who in turn sell the poultry to shippers. These shippers put them in live poultry cars, and they are shipped to the Eastern market. Then they come to New York and then they go to other markets. The poultry arrives at about five terminals, in the Metropolitan District. New York Central at 60th Street, Manhattan; there is one at Weehawken and Hoboken, New Jersey; the Lackawanna at Hoboken, New Jersey, and the Central Railroad of New Jersey at Communipaw, New Jersey. These cars arrive there and they are usually consigned to one of the commission men. Our house receives poultry at all of these

railroad terminals. We in turn have our salesman and a weighmaster there. These patent cars consist of 128 steel cages known as decks. They are specially built cars for the poultry industry. When the cars arrive at their destination, the poultry is removed from these decks and placed into wooden crates. There is an unloading gang for that purpose. The unloading gang takes them and puts them into wooden crates. They they are loaded on trucks and they are sold to customers at the cars or carted to New York where they are disposed of in the City of New York. [fol. 510] The description of the arrival of poultry which I have just given is applicable to business carried on in New York. About 90 per cent of the live poultry that is sold in the City of New York, I have indicated.

Practically all of the poultry in these carload lots comes from the West, outside of the State of New York. I would say that our house sells at the railroad terminals 70 to 80 per cent. We receive the poultry on commission. The bulk of our business is commission business. We assume the accounts. Then we transmit the price of the poultry we receive to the Western shipper less our commission. When I say "we" I mean commission men generally, all the commission men so far as I know. I am acquainted with the various commission men in the West Washington Market that do business. There are about twenty. I know them all personally. When this poultry gets to New York and it is put into the coops we contract for the labor to take it out of the cars. After the poultry is out of the cars and into the coops, the trucking company does the labor. The trucking company provide us with two loaders who lift the crates from the scale on the trucks. Then when the poultry is taken to our stand at West Washington Market, we have a stand man employed by the commission merchant.

These men who do the handling of poultry belong to a union. I couldn't tell you the name, but it is the same union that is all over the market, that is the technical detail. We describe it as Tootsie's union. I know the delegate of the union, Harry Shomer.

I think he is the only delegate. I know a man by the name of Arthur Herbert. I have had talks with him about [fol. 511] his connection with the union.

The commission merchant negotiates with Mr. Herbert for their labor. As one of the commission merchants, I negotiated with him. He did not tell me what his connection with the labor union was. Then there were some other delegates there, but I don't recall their names. This was in connection with the Commission Merchants' Association of which I am president. I think I negotiated with them about a year ago last January it may have been, last January—it has been going on quite a few years. I had negotiated with him before that time, and since that time, with regard to labor matters. There is no one else with whom I talked concerning labor matters.

Most of the poultry is received at the terminal of the New York Central. About 50 per cent of the poultry I would say comes in at the New York Central. Erie would be next, the Lackawanna, the Central Railroad of New Jersey and then the Pennsylvania. I do not know whether the loaders employed by the trucking company belong to the same union as the union which I have described. 90 per cent of the live poultry coming into New York comes in this manner over the railroad in cars. The other 10 per cent comes into New York by express or truck. About 80 per cent of that 10 per cent comes in from points outside New York State. In my judgment not more than 2 per cent of the live poultry sold in New York originates within the State of New York.

Cross-examination.

By Mr. Jacobson:

The Witness: I have been president of the Commission Merchants Association of New York City for about seven years. The commission merchants are known as receivers. [fol. 512] The business generally conducted by the receivers as a group is practically the same as that which I have described. They all conduct business pretty much alike. They take the poultry from the time the shipper forwards it to the market. It comes here alive. It is limited in the district where the poultry is handled when it is alive. The persons who deal in the poultry when it is alive are licensed for that purpose, and they deal in it only in coops or crates; they don't sell it by the head. They are persons described as marketmen or as slaughterhouse men.

They do not sell it alive. They must slaughter it and sell it.

In our transactions with the shipper, confining ourselves to poultry by car lots and taking that car lot of poultry as typical of all, the shipper sends it on to us in New York. At the time he forwards that poultry to New York, the place of delivery is simply New York. It comes shipped either under a live stock contract or bill of lading. These are straight bills of lading. The shipper attaches the bill of lading to a draft and draws a draft for a considerable amount of the cost of the car. That draft is presented to the receiver, and the receiver pays the draft usually before he gets the poultry. That draft approximates the selling price of the poultry. If the market is higher the draft is greater and if the market is lower, of course, the draft is less. But the amount of the draft is generally approximately near the proceeds of the poultry for that car. The receiver, after he disposes of that poultry, renders an account to the shipper. He renders an account on the basis of market price; it may be the sale price. There are no special arrangements between the receiver and the shipper as to the price before the goods are received. You [fol. 513] have to return the market price the day the car is unloaded or you won't get any more cars. That is, without reference to the date of sale. When the selling price is returned, of course it happens to agree with the market price on the day of unloading. The receiver sometimes sends to the shipper more than the market price on the day of unloading.

If we cannot sell the poultry at the car, or we cannot sell it when it reaches our stand, it is a sort of unwritten law in our business that the shipper is entitled to the market price the day of unloading regardless of what we sell it for the next day. We get the increase if the poultry brings more than it was on the day of unloading, the next day. We remit to the shipper the market price of the poultry as of the day the poultry is unloaded. But if we do not in fact sell all of that poultry at the place where the unloading occurs and we bring it over here to New York and hold it a day or two, and the price advances, the advantage is ours. It does sometimes happen that the receiver undertakes to pay the shipper more than the market price the day of unloading, sometimes half a cent, some-

times a quarter of a cent a pound, sometimes three cents more than the market price the day of unloading. And that is without reference to the market price at which the goods are sold. There are some what we call fancy or desirable fowls which at this time of the year are known as the Indiana grade, and if the shipper sends in a carload of that grade of poultry and we are unable to sell it due to a glut in the market, we feel that he is entitled to what the poultry would have sold for if we were good enough salesmen. If we fail to sell it we feel he should be paid nevertheless. That poultry commands a higher price than ordinary poultry. [fol. 514] There are at times several prices, special prices, which the receiver must guarantee to the shipper. The shipper may demand a specific price, knowing that he has an Indiana grade, and knowing that it would sell at either two or three cents premium, he may demand that premium; otherwise he won't ship. And the receiver must guarantee to return that price, even though due to extraordinary market conditions he is obliged to sell that poultry for a great deal less. On the basis of these various price arrangements and returns from the receiver to the shipper, the receiver makes certain deductions. There is the freight, there is a coop charge, unloading, cartage and feed, and a percentage to the receiver called the commission. These deductions, however, are not made from the proceeds of the sale but are made from the price arrangements between the shipper and the receiver.

Up to the time that the poultry arrives at the terminal in or about New York there may be a shrinkage in the weight of the poultry. Those shrinkages are due to climatic conditions or the health of the bird. It is pretty hard to say. Sometimes there is a gain in weight, and when there is a gain in weight due to the time that the poultry is unloaded, the shipper receives the benefit of that gain. When there is a loss in weight, that loss is chargeable up to the time of unloading, to the shipper.

There is a man in charge of the car during transportation. He is called a car man. The shipper employs him. He is the shipper's representative. He is the man to whom I referred when I said the shipper's representative was present when weighing at the time of unloading. All gains and losses then up to the time of unloading inure to the benefit of or are charged to the shipper, as the case

[fol. 515] may be. The unloading is done at the various railroad terminals. That is, the poultry is taken out of these cars especially adaptable to the live poultry transportation and placed in wooden coops, and at the time they are placed in the wooden coops the wooden coop is weighed empty. That is called tare. And when the poultry is placed in the wooden coop from the cage it is weighed loaded. That is the gross weight. By deducting the tare weight from the gross weight, you ascertain the weight of the poultry. Then we sell it, or try to.

The shipper's representative is present at this unloading or weighing transaction. He takes the weight there, and we take weight for our own protection. We sometimes transport the poultry to our place of business from the railroad terminal. We have it sometimes a week or two. This is live poultry and must be fed and must be watered. During transportation the cost of feed and water is borne by the shipper. After the poultry reaches our place it is unloaded, and we bear the cost of feed and water. If the poultry shrinks, loses weight, after it reaches our place, the receiver stands the loss. If the poultry gains in weight after it reaches our place, we make that gain. The accounting is based on the weight at the time of unloading and the other costs and commission at the time of unloading, as the case may be. It is all based on the transaction at the time of unloading. And that is true whether we take the goods to our place or sell it from the railroad terminal. If there is a loss or damage after unloading, we bear the loss.

About half of the entire poultry that arrives and is dis-[fol. 516] posed of in the City of New York comes to the railroad terminal 60th Street and Eleventh Avenue over the New York Central Railroad and the other half is distributed among the four railroads I mentioned, the Erie, the Lackawanna, the Central and B. & O.

This freight is paid from the point of origin in the West to New York on these cars, but we unload some of it over in New Jersey as I indicated. The railroad pays the ferriage. They permit the truckmen to buy ferriage tickets, so that when a truck goes over a ferry, the truckman simply has one of the small ferry tickets. The railroad, in turn sends a check to the receiver at the end of the month for all the small tickets they receive ba-k. It is part of the railroad

tariff; that is, for each truck of chickens that comes across the ferry, the truck driver gives the railroad representative on the ferry a ticket, and at the end of the month the railroad company will redeem those tickets at their price that was paid for them, but the original freight bill will show that the car is billed to New York, and we then remit that sum that we received from the railroad company to the trucking company because they lay out the cost of those tickets.

By Mr. Jacobson:

The Witness: There are two receivers in the Bronx, City of New York, and one in Hoboken, and the rest are all in the Borough of Manhattan, City of New York. Now, of this 50 per cent or approximately 50 per cent. of the poultry that comes to the terminals in New Jersey over railroads other than the New York Central, about 25 per cent. of that is transported to the place of business of the receiver. That, added to the 50 per cent. over the New York Central makes [fol. 517] a total of 62½ per cent. that comes to the place of business of the receivers in Manhattan without having been previously sold, and is sold from there. Of the remainder 37½ per cent. of the whole, disposed of in New Jersey, the majority of it is all disposed of to buyers in New York, but we sell to Newark and to Passaic, that is, to towns in New Jersey. The persons to whom we sell are marketmen here, to whom we have referred as the slaughterhouse men. They buy upon credit. That is practically and entirely a credit business, running from ten days to two weeks. Bills are due in ten days. Substantially all of the sales made in New York are made upon the credit basis such as I have mentioned, by all of the receivers. The shipper does not know to whom we extend credit nor to whom we sell. The shipper does not know at what price we sell nor the terms of our sales. The receiver extends the credit to whom he pleases and sells at the price he pleases and to whom he pleases. The shipper has absolutely no control over it. It is a matter entirely chargeable to and up to the receiver. It is his own business.

On our sales to these marketmen or slaughterhouse men there are sometimes made what is termed in the trade allowances or rebates. It may be due to a market condition, may be due to the quality of the poultry being a little worse than what it was represented, may be due to an error in billing.

These allowances are usually made in the course of business and are borne by us. The shipper has no connection with that whatever and doesn't bear any part of it.

Some of these receivers actually buy the goods themselves, without any deductions for what is termed a commission charge or anything like that. They agree upon a [fol. 518] flat price with the shipper. Sometimes that price is the price on the track out West and sometimes it is the price delivered in New York.

In the spring of the year, from January 1st to April 1st, there is quite a large proportion of poultry that is bought, but from then on to the first of January I doubt whether there are many cars that are bought.

Some of these receivers of goods handle poultry only that way. They are virtually jobbers. When the receiver gets this poultry from any particular shipper, he mingles it with other goods when it comes to his own stand. Supposing we were receiving poultry from half a dozen shippers during one week and we brought that poultry over to our own stand in West Washington Market, we would probably mix the crates so that we would not be able to distinguish one from another. We cannot then tell whose poultry we were selling to any particular man. We sell it indiscriminately, and mingle it sometimes with our other poultry we had actually bought outright. When we sell it to these marketmen or slaughterhouse men, we sell it in coops. It is in the coops when we sell it to them after it has been unloaded. These bills of lading with the draft attached; if the account is a good one, we pay them on presentation, and sometimes we wait until we get the poultry and inspect it before we pay the draft. These are all straight bills, so that we can get the poultry without the surrender of the bill.

Live poultry is not shipped under order bills of lading any more. We can actually get the poultry before we pay for it because the railroads know these receiver concerns, and they know the goods are consigned to them. We take [fol. 519] the poultry out without the surrender of the bills of lading, but these drafts are paid to the shipper, that is, maybe all and maybe part of the purchase price. Sometimes the amount we pay the shipper exceeds the price, sometimes it is less. Those accounts of sales are adjusted from week to week. After the poultry is unloaded the receiver has got to take them and pay for them. He has no option, and

he has to settle for them according to the price on the day of unloading, less these items to which I have referred. The New Jersey Coop Company furnishes the coops.

By Mr. Kaufman:

As a matter of fact, our firm and all of the receivers are in fact buyers of the poultry that is shipped to us. We take the credit risk; that is never passed on to the shipper. If there is any loss or disruption in the property, the poultry, after it is unloaded, we take the risk of that. So that from the time the cars are unloaded and the poultry is transferred from the cars to the coop, any loss or damage is the receiver's, and any disposition that the receiver makes is the receiver's business and has no concern with the shipper.

By Mr. Shalleck:

The Witness: When we receive the poultry unloaded we then do what we see fit with it; we can sell it or give it away or fix any price on a resale, as we wish. And there is no agency that can tell us at what price we can sell that poultry once we have unloaded. We have nothing to do with the slaughtering of the chickens.

Redirect examination:

The Witness: I am acquainted with the names of the per- [fol. 520] sons in the book, Government's Exhibit 13. They are marketmen. They operate slaughterhouses and buy their poultry in West Washington Market. The list in that book is greater than the number of men here in this room. In other words, the men here in court as defendants handle about 60 per cent., 55 or 60 per cent. of the business done in West Washington Market.

The percentage of all the live poultry coming in to New York that I had in mind when I referred to commission poultry, that is, poultry sold on commission, is about 80 per cent. Our agreement with the shipper as to that 80 per cent of the poultry, the nature of our contract with him, as I understand it, is that we are to return him the market price the day of unloading regardless of sale. And it is also part of that that we deduct certain charges, among which is included a charge of usually four, but it may be three or it may be five per cent. I understand the nature

of our contract with the shipper as to the poultry that I referred to as purchased poultry to be that the shipper sets a price, either his truck or New York, and it is either bought or rejected at that price. We have no other obligation to the shipper as to the purchased poultry except to return the agreed price. As to the total poultry coming into New York, the percentage sold at the railroad terminals, I would say, is around 70 per cent.

By Mr. Kaufman:

The Witness: With respect to the 80 per cent of the poultry received by the receivers that I described in answer to Mr. Oseas' question as having been sold by us on commission, that is the poultry with respect to which we as receivers take the entire risk of loss after the time of unloading, the risk of resale, the credit risk of resale, and with [fol. 521] respect to which our obligation to the shipper is fixed and determined that we will return to the shipper the market price at the time of unloading. The only difference between what we describe as purchased poultry, which is 20 per cent of the whole, and commission poultry, is that with respect to the purchased poultry there is a price fixed before the time of delivery and with respect to the so-called commission poultry the price is not fixed until the market price is determined the day of the delivery to us. But with respect to every case the obligation is either a fixed price or the market price is fixed and determined, and in either case we take the entire risk of shrinkage, of loss and destruction, of credit and of resale.

I have known Mr. Arthur Herbert twenty years. His father worked for my father. He worked for my company for some thirty years. I have known other people who knew Arthur Herbert, and so far as I know, his reputation is all right.

I on behalf of my firm entered into a contract with Local 167, being the International Brotherhood of Chauffeurs, Teamsters, Stablemen and Helpers. I have a copy of that contract. That contract was with respect to the scale of wages to be paid by us to our employees who were engaged as helpers or loaders.

By Mr. Shalleck:

The Witness: These defendants who are marketmen purchase merchandise from us. In addition to these de-

fendants we have also sold merchandise to other persons. In other words, any person, whether he belonged to the Chamber of Commerce or not, whether wholesaler or retailer, could come to us and we would sell him."

[fol. 522] CHARLES F. HAWK, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I am in the produce commission business, specializing in live poultry. I have been engaged in that live poultry commission business a little over forty years. I am acquainted with that business. I receive each week about possibly—average about thirteen to fifteen cars the year around. Not one per cent of the poultry that I handle comes from within the State of New York. There *is* others that receive a larger percentage of their business from New York State. I would say about 85 to 90 per cent of the poultry coming into West Washington Market by freight originates outside of the State of New York. Of all the live poultry coming into the New York market, about the same proportion comes by freight. The other 10 per cent would be locally trucked in by the local trucks or express. Of the trucked in or expressed poultry, about 10 or 15 per cent comes from the State of New York. I do not think one per cent of all the poultry is local, from New York State. Most of this poultry is freight poultry and is consigned to commission men like myself. There are eighteen or twenty commission men handling poultry in West Washington Market.

On the arrival of the poultry at the terminal, we go there to receive the car. We sign up to the railroad company for [fol. 523] that delivery. Then that poultry is ours. We are responsible for it. Either by phone or personal conversation we take orders for that particular car of poultry.

We have a man, gangs of men, and trucks are there to take it out and weigh it, and deliver it subject to our orders from the office in New York. Sixty to seventy per cent of that poultry is sold directly out of the freight car. I only speak for myself. Other people might do business differently. From my forty years' experience in the business, my best judgment is that the amount of poultry sold directly from the freight cars, that is, loaded on trucks, is about 60 to 70 per cent. That is out of our hands. About 40 per cent of the poultry is trucked to West Washington Market before being sold.

Of the poultry that is truckloaded to the market, some days all of it is disposed of the same day; some days quite a lot is carried over there, as much as eight or ten cars a day. It would be impossible to dispose of it every day. If we have 250 cars and we are unloading 75 of them it would be a physical impossibility to dispose of them that day, but they will be trucked one day and put on our places and we carry them sometimes two, three or four days. Some concerns carry over every night a hundred to a hundred and fifty coops. Of all the freight poultry that comes into the New York market, about 35 to 40 per cent is unloaded at the receivers' stands in West Washington Market. That comes from the New York Central, New York, and the terminals across the river, in New Jersey, Lackawanna, Erie, and Jersey Central.

This poultry is sold by us under different arrangements with the shipper. Sometimes we buy it outright; some- [fol. 524] times with joint account with them, supposed to be first cost, but we always try to do it on a commission basis of four per cent. I cannot say what proportion of the freight poultry coming into New York is handled on a commission basis. The proportion of the freight poultry that I handle on a commission basis is about 98 per cent.

There is a standard charge of freight, cost, unloading, coops and whatever money the car man, the attendant, draws to buy his ticket back. That don't take in the drafts that the shipper has made before. All the poultry is consigned to New York, even that unloaded in New Jersey. These expenses all occur after the poultry has been unloaded; that is to say, the poultry is put in the coops after it is unloaded. The shipper stands that expense, but I understand there are several arrangements with some

people where they rebate that back on account of the competition.

When we sell this poultry, we guarantee the account and deduct four per cent. We remit to the shipper never less than we sell it and very often more. For instance, the shipper will want the top quoted market. In order to get his business we will take a chance and say all right. That is, we guarantee that we will remit to him the top price, whatever it is, if his goods warrant it. We remit the actual sales price whenever it is a matter of business policy to retain the customer, the shipper and his goods for future business. The usual remittance is the highest price. We occasionally get a premium for poultry; that is included in the highest price.

The shipper at times gives us instructions as to when to sell. They will come in two forms. One of the forms will be "Don't unload my car and sell it under such and such a price". In fact he will put a limit on it. We obey those [fol. 525] instructions. The other one is "Don't unload my car on Monday". He will specify probably the day—Tuesday or Wednesday.

As a commission man, we are practically a bank for the shipper and a collection agency. We keep him advised of market conditions daily, that is, as to poultry which we receive on commission. When poultry is purchased outright, that occurs in some cases. We do not necessarily keep him advised of market conditions. The price it is sold as a rule is made out so much at Western points. I don't know much about performing services in connection with that poultry, that is, keeping them advised of market conditions. We do very, very little of it, these outright purchases. As to general market conditions, they are supposed to be reported to the shipper, but we can only be responsible for our own receipts.

As to premium poultry, whether it is worth a premium rests between the buyer and yourself, but if you have told the shipper you can get it for him, you have to return it whether you get it or not. When we get the poultry to New York, if we see it is extra quality, we go ahead and get a premium, and when we do get it, we send him that.

The market price of this poultry varies from day to day. There are three or four different market prices at this time of the year. I said it was sold at the market price, the top market price, according to the quality of the goods, but we

cannot judge that quality until this 35 or 40 per cent comes over there, and we look at it ourselves. We can only take the man's report on it. Assuming that I have sold out all my poultry at 12 or 1 o'clock and thereafter I discover that poultry has been sold at a higher price than I sold it for, [fol. 526] I will try and remit my own sales. The next day I can get a call that the other fellow sold for more money and asking me to do the same, to remit the difference. If he is a real good shipper, it might be wise to do it. If he is an occasional shipper, why we don't do it.

After the car gets to the terminal, the buyers never select the poultry before it has been taken out of the cars. We start to get orders as early as we can in the morning. Those sales are made subject to inspection. In regular business that cannot be considered a sale. Probably 50 per cent or less of the poultry is ordered in this way, subject to inspection.

That 50 per cent of the poultry is ordered from the cars before inspection, only applies to my own cars. Of the poultry that we receive, we get all we can out of our hands on the same day, possibly all of it that day; perhaps not all, perhaps half of it, perhaps a third of it left. It is pretty hard to estimate that because there are so many changes there. There are changes every day; there is no day hardly alike; there is no week hardly alike. It is our policy to get it moved just as quickly as possible. The speed with which this poultry moves out of our hands depends on market conditions, supply and demand. If there should be a slight shortage, it moves very rapidly then.

Cross-examination.

By Mr. Jacobson:

The Witness: The poultry is described in the trade as of two kinds, freight and express, and includes the product which comes on freight cars from a distance, and a regular freight carriage is charged by the carriers, and express goods that come from nearby localities by express cars [fol. 527] or by truck. The portion received by freight is about 85 or 90 per cent of the whole; the other 10 or 15 per cent are known as express goods. A very small part of it originates from within the State of New York. Freight goods come in over the New York Central, Lacka-

wanna, Erie, Pennsylvania, New Jersey Central. Some cars come in over the B. & O. very few. The average receipts a week are normally about 200 cars. This has been the normal consumption for New York, except this past year it has been a little low. During the period beginning say the 1st of August, 1927 to September 1, 1928, it would average around 200. There was no lessening of supply during the period from August 1927 to September 27, 1928, as compared with the previous years.

As to the goods which come over the railroads, more than half of it comes over the New York Central, going back to when the New York Central started in receiving; I should judge that is two or more years ago. Their terminal is 60th Street and Eleventh Avenue, Manhattan, New York City. The terminals of the other railroads are in New Jersey. Of this 50 or more per cent. of the entire receipts that come in over the New York Central, 60 or 65 per cent. of those goods are sold at the railroad terminal. The balance of it is carted by truck to West Washington Market and sold at the receivers' stands in West Washington Market. Each of those receivers or commission merchants are licensed. They handle goods by the carload. They cannot sell except by the car and they cannot sell except alive.

As to goods which come over the Jersey railroads, that is, the Central Railroad of New Jersey, the B. & O., and [fol. 528] the Pennsylvania, I would say about 10 per cent. is sold at the terminals to the people that live in Jersey and the balance is sold through New York. We don't sell any of that poultry at the railroad terminals; we sell through our office. On the average, about 25 or 30 per cent. are delivered at the terminals to New York people. The balance is trucked over to the receivers' place in New York and transferred to their own trucks and then sold from the receivers' place of business. That is true as to the Pennsylvania, B. & O. and Jersey Central, the Erie and Lackawanna—they come by way of Buffalo, through New York State and New Jersey; that is their last terminal; but they are billed to New York. All poultry dealt in by the New York receivers is billed to New York. These railroads that have terminals in New Jersey have no terminals in New York to unload live poultry.

Some poultry is shipped on order bills of lading. We get it every week. That is where the shipper ships to himself.

If it is necessary, you pay the draft attached to the bill of lading before the railroad will deliver you that poultry. There are times when a shipper ships poultry without having in mind the commission merchants to whom it is to be delivered. Sometimes he waits until he sees who will give him the best deal, and in those instances he ships to his order. He selects the merchant while it is in transit. These are shipments under order bills.

Where the receiver is known to the shipper, the poultry is shipped direct, consigned to the receiver. On straight bills of lading it is consigned in that fashion. Sometimes [fol. 529] the drafts are mailed and lots of drafts come in without any bill of lading attached. Sometimes a bill of lading comes in without a draft; that is with shippers we have done business with for a great many years and who know we are going to send them a check. Even in those instances we pay four or five days in advance before the goods arrive. Those payments are on account of the entire price, an advance on the gross. When the draft comes in, sometimes it is attached to the bill of lading and in order to get the bill of lading we must pay that draft. That only applies to an order bill of lading. As to the straight bill of lading, we get the goods without a bill of lading. On an order bill we must deliver the bill in order to get the goods. On a straight bill of lading we get the goods without surrendering a bill of lading.

The term "commission merchant" has been applied there in that market ever since it existed. Up to fifteen or sixteen years ago there were two distinct branches in West Washington Market handling the live poultry trade. One was called receiver, supposed to be a commission merchant, and the others jobbers. The receivers who call themselves commission merchants received the poultry in carload lots and sold it to the jobbers in car lots, and the jobbers then sold it to the slaughterhouse men by the crate. That line of demarcation was eradicated about 1911, and since that time all of the receivers in West Washington Market have been receiving the goods in car lots and selling them to the slaughterhouse men by the crate and they call themselves commission merchants. They all do their business the same way, buying and selling on joint account and on commission. Some of those concerns in West Washington Market

[fol. 530] today and during the period two years ago, did not do business on a so-called commission basis at all; they bought the goods on flat prices on track West, or on track delivered in New York. It is all a matter of contract between the purchasers and the shipper. There is no written contract. Only the telegrams.

The per pound may not be specified but it is fixed for the price to apply say on a particular day on which poultry is bought. For instance, take St. Joe, Missouri, that is a well known shipping station. Using that as an illustration, take one of the men in West Washington Market, New York, who buys a car, St. Joe track, that is shipper's track, he orders it delivered at the railroad there, and all subsequent charges are assumed by the buyer. If he sells it delivered in New York, the buyer pays the charges up to New York. The shipper puts the feed in and you pay the carman's expenses unless you have a specified deal. That is all a matter of contract between us and the shipper of the poultry.

On the other hand, these commission transactions are matters of custom and practice in the trade, modified by a special agreement in some instances. The shipper sends to the receiver in New York, he consigns to him at New York, and at the time he either sends a bill of lading with draft attached or bill of lading without draft attached or a draft without bill of lading. The receiver always gets a bill the following day, by the pound, and the different charges that he charges against him. The shipper pays all charges, what we call standard charges. They have carmen in charge of the car who feed and water the poultry. Then [fol. 531] the feed necessary, and cartage after the poultry has arrived here, the shipper pays all that. After the poultry reaches the terminal and is taken out of the car it is put in coops. When it is taken out of the cars and put into coops, that is called unloading. The shipper pays for that and for the crates. Up to that time all the charges are paid by the shipper. Those may be advanced by the receiver, but charged against the shipper when the account is finally rendered to him.

During the transit there is what is called shrinkage. Up to the time of unloading the shipper stands the loss of shrinkage. If there is a gain in it, he gets the benefit of that. Shrinkage includes loss of weight, natural loss of

weight, and also death from any cause whatsoever. The receiver then gets it in the crates from the railroad terminal. From that time on, the receiver stands all the expenses with reference to this poultry. The receiver pays the cost of handling and selling over at the market, and if there is loss or damage, loss through fire or any other cause, he stands that after they are unloaded, without recourse to the shipper.

We sell poultry to anyone that will buy it; there is no specified person. The receiver selects the buyer. The shipper has nothing to say about it. The shipper does not have anything to say about the terms upon which we are willing to sell that poultry; he has no control over it. I have never hea-d of a man, after poultry has been unloaded by the receiver, giving back to the shipper poultry because he did not like the transaction or did not like the poultry or something. I have never heard of a shipper demanding it back because he did not like the way the receiver handled the business.

[fol. 532] The cartage from the terminal in New Jersey to the receiver's place of business in New York is paid by the shipper; that includes delivery up to the receiver's place of business. When poultry is taken to the West Washington Market and there unloaded from the trucking company to the buyer's truck, it is the shipper who pays the charge up to the point where the buyer gets possession of it in the West Washington Market. The shipper stands all charges up to delivery at our place of business. When we sell to buyers at the railroad terminal, we charge cartage back to our place of business to the shipper. We collect it and pay the trucking company. The slaughterhouse man or the marketman pays the cartage up to his place of business. If delivery is taken by the buyer at the railroad terminal, I pay the trucking company, but the buyer gets no direct benefit.

The Court:

Q. That is, the trucking company gets paid whether he trucks the chickens from New Jersey to your place of business or not; he gets it?

A. He has the equipment there, ready to cart every coop.

By Mr. Jacobson:

The Witness: The trucking company is benefited by not having to transport the poultry from there over to our place of business. The trucking company does not make an allowance of that cartage to the marketman or slaughterhouse man. He charges the slaughterhouse man just the same and that is an item that the shipper pays.

Our commission deduction is now standardized wherever it can be at the standard rate of four per cent. That is not the percentage that we do get. We have to remit to the shipper very often a little bit of that back. We account or [fol. 533] return to the shipper on the basis of the first day following the day of unloading. If a carload of poultry comes in on Monday, there is a chance that the price that that car is to yield will not be fixed until we have determined the number of cars of poultry that come to New York in that week; but we have to know pretty well what the receipts will be for the week before the market price can be established. The shipper who sends the poultry that arrives here on Monday is likely to have the price at which that poultry is transported fixed by the cars of poultry which arrive Tuesday or Wednesday; that is because the buyers will not pay more than other buyers will pay for similar kinds of poultry. It would result in a condition like this: Where we make a flat price for the benefit of the marketmen or slaughterhouse men, and then later somebody will pay them a little bit less, the first man will insist upon a reduction even though we had an agreement with him as to price; he would not pay more than other people would. Butchers and chicken dealers do the same thing. The shippers, on the other hand, get the highest price.

If we have to carry poultry over to Thursday or Friday, or even into the following week, we account to the shipper as of the unloading day after the price is established. The nearest price to the time of unloading is the one which is made the basis between the shipper and the receiver. It does not make any difference when the goods are sold. I can carry them for five days, and if it is worth 10 cents a pound less I have got to lose it. But aside from the expense that we have to bear, any gain in price helps us. In all transactions between the receiver and the shipper, the unloading becomes the line of demarcation. We render an [fol. 534] account to the shipper at the end of each week.

We tell him the price or terms at which we sold the goods. In our account of sale we just state the price, and that price is the market price obtainable at the unloading.

There are different grades of poultry, about half and half, six months fowl and six months chickens. There are different prices for fowl. Chickens are largely called spring chickens. Fowl are older hens. At times the chickens predominate, the number of chickens is greater than that of fowl. At other times, fowl predominates, and the price of fowl is more than that of chickens. Leghorns are a cheaper grade, and Plymouth Rock a higher grade of fowl. At different times there are different prices as to each kind. The place of shipment affects the price. The section of the country from where the fowl originates is pretty well known to all people engaged in the trade and they know where good fowl comes from and where the poorer class of poultry comes from. The better poultry comes from the northern part of the Middle West and the poorest grades are from the South at certain times of the year. There are different prices and quotations for those different sections. The price of Western poultry is more than the price of Southern poultry, and for Southern poultry the shipper may want the highest price for Western poultry on the day of unloading; it does not make any difference what we sell them for. That is all competition.

It is nothing unusual for poultry of one kind to sell for three to five cents a pound less or more than the poultry of any other kind. Of course, the increase in that requires that the price to the slaughterhouse man and the chicken [fol. 535] dealer be accordingly increased. In the same block it may be that someone will buy three or four or five cents cheaper, and he will come and speak and tell me that so and so got cheaper than he got. I am familiar with the conditions here, and it is necessary for a man in that line of business to keep in touch with what his customers are paying for account credits.

Live poultry being a highly perishable product, everybody that is in the business is anxious to move it, and most of the poultry sold is upon the date of unloading. It therefore happens that the selling price may be the same as the price on the day of unloading. Even after the years I have had to pay the top price to the shipper under circumstances which I have testified to, I find my business profitable if I

do not have any bad debts. I find that it is possible to do business in any event. Bad debts have not been so much as the shippers' item of overdraft, the last few years, which we have to stand. I have heard of the Greater New York Live Poultry Chamber of Commerce.

Redirect examination:

The Witness: Buyers do not go to New Jersey to load their trucks at the cars as frequently as they used to because of the license requirement and the necessity of having a New Jersey license. That condition has been in force since the New York Central first started in to receive poultry in New York; I judge that was three years or more. Instead of going to New Jersey to load up their trucks at the cars they wait until the trucking company brings it over to the West Washington Market, and load up there on their own trucks. They buy it and then they load it up at the market. [fol. 536] They do not buy it until it is on their own trucks; it is not considered sold until it is on their own trucks. They order it over there and then it is brought here—they *over* it over there at the particular car, but it is not considered sold until it is on their truck. If they intend to take it, then it is delivered at West Washington Market, transferred in the street or any place from one truck to another.

The shipper exercises control over the poultry which he tells us to sell at a certain price or unload at a certain date; we must obey his instructions. He is speculating; that is what we call it. In that case he takes a chance on what the price is, no matter when we sell it. In such a case he sustains the shrinkage.

Conditions in the poultry business, the usual course of business, have changed very much during the past five or six years. They changed in this way, that the remuneration of four per cent. does not amount only to a term, through competition. There are receivers who have come into the business where they handle for three per cent, and I have heard of instances as low as two per cent. All of the poultry which I receive is on this commission basis.

Recross-examination.

By Mr. Jacobson:

If there is a shortage in supplies, my customer comes to me and tells me how many coops of poultry he wants. Those

are orders for goods that are in transit. I get from him a designation of what his requirements are. He does not actually take any goods or agree to take any; he merely tells me what his needs are. That is what I mean by orders which I explained.

[fol. 537] As far as the shipper's instructions as to price are concerned, on the day of unloading, if the shipper tells me to withhold poultry, to withhold unloading, I withhold unloading in accordance with his instructions. The unloading day is the day upon which I have instructions.

If my shipper tells me not to unload say for three days, I unload three days later and if I cannot sell the poultry, my shipper cannot tell me at what price to sell it after I unload. Once it is unloaded he has no further control in the matter or the right to give instructions.

[fol. 538] MAX FELD, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I am in the butcher business eight years. During the summer of 1927, I bought from Isidore Frank. I tried to buy at that time from Tremont Live Poultry; then after I went out of New York to Englewood, New Jersey. When I went to the Tremont Live Poultry he said he is sorry, he cannot give me any stuff. They told me if they give me stuff they cannot get any stuff downtown at West Washington Market, I think. I did not try any other markets in New York. I was trying Englewood, New Jersey. I do not know the name of the market. I went to Englewood and I said, "I will pay you cash."

Q. Did you get any poultry there?
A. I couldn't get any.
Q. Did they give you any reason?
A. The same reason, they wouldn't get stuff downtown.

Mr. Jacobson: We object to the conversation. It was with some unnamed person, not even in the City of New York, a person not named in the indictment——

The Court: Overruled.

Mr. Jacobson: Exception.

I also tried in Flushing, Long Island; I cannot exactly remember the name. There is only one there. I also wanted [fol. 539] to pay the man cash. He said people were here last night and told him distinctly not to sell any stuff to butchers, and I had to turn back. I offered to pay cash in Englewood. I tried 108th Street and First Avenue. The market is not in existence now. It was Globe Live Poultry. I got poultry there about six weeks, then the chicken association broke that open and I went back to Isidore Frank and I got stuff. Those are the only two places I was trying. I was followed on 116th Street one time. I don't see them. There were two fellows, but I don't see them here.

The following testimony was given by the witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am still a butcher dealing in killed poultry. I never bought in the Washington Market. I bought from the marketmen. In the summer of 1927, I had some difficulty in getting poultry which lasted about six weeks. At the end of those six weeks, I did not have any further difficulty. I did not have any difficulty about getting poultry as soon as the association broke up. I cannot tell you dates. The association broke up a year and a half before the criminal trial. Since the association broke up I haven't heard of any one else having difficulty in buying poultry.

Redirect examination.

By Mr. Rice:

The approximate time when I went to Englewood, New Jersey, was in September 1927 or possibly 1928. It was the same year when they started the association. I had this difficulty in getting poultry in Englewood, New Jersey.

After that I went back to I. Frank. I had to go over there [fol. 540] if I could not get it anywhere else. Then I went to Flushing, Long Island. After I tried to buy poultry in Flushing, I went back to I. Frank. I had to go back. Finally, I stayed with I. Frank because the association broke up. After the six weeks, while I had trouble, I bought by I. Frank all the time, until the association broke up. I can buy poultry wherever I want to now and have been able to since the association broke up.

Mr. Kroppy: I want to make a motion to strike out this witness' testimony on the grounds previously urged.

The Court: Motion denied.

Mr. Kroppy: Exception.

[fol. 541] MEYER STEINBERG, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I sell slaughtered poultry. I have been in this business fifteen years. Between the summer of 1927 and the summer of 1928 I bought from the Tremont Live Poultry Company. I also tried to buy from Schonzeit. They told me I cannot get any poultry because they will stop him off the poultry. I also tried by Joe Mines, operating 75th Street Live Poultry Market. There I killed a couple of times until I called him up again and he told me I can get no more poultry. I said "Why?" He said "They stopped me off the poultry". I did not try anywhere else. I know Joe Mast. He told me that I should not run around and I should stay in my place and kill the poultry. I told him, "I can't stay. I want to make a living". So I said "I used to pay before three cents above the market, now I got to pay six cents." So he told me we got expenses. So I told him "You don't have to keep no gangsters to have such expenses". So he told me they are fine people and want to make a living. I attended a meeting of Bronx butchers during the summer of 1928. Some marketmen were present, Pop Sokoloff, Izzy Frank, Louis Spatz, and

Sam Goldstein. The meeting was, I think, in August. We asked for open doors, so Pop Sokoloff said "We can't give you open doors now. We will have a meeting and will let [fol. 542] you know about it". Sam Weiner did the talking for the butchers. About a week after that I was buying wherever I wanted to. During the period between the summer of 1927 and the summer of 1928 I used to pay five cents for fowl, seven cents for spring. After this meeting I paid three cents for fowl, four cents for spring.

The following testimony was given by the witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I still have that retail store. Some time in the early part of 1928, there was a meeting of the market men and the chicken retailers together, asking the marketmen for open doors. A week after this meeting, I was able to buy poultry cheaper, and wherever I wanted to get it. Since that time I have had no difficulty in buying poultry anywhere and at any price I wanted to buy it for. I do not know of any trouble during the last three or four years. I don't know of any other meetings between the market men and the chicken men after this meeting that I have just testified about. That meeting was in September of 1928. Since that time I know of no difficulty of any kind in the poultry business.

Mr. Kroppy: I move to strike out the testimony of this witness on the same grounds as previously urged.

The Court: Motion denied.

Mr. Kroppy: Exception.

[fol. 543] David Glassner, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I sell slaughtered poultry on the East Side about twelve years. During the summer of 1927 I bought

from Nierenberg and continued about a year. During that period I tried to buy from Chast. In July or August, 1927, I went over to Mendel Chast to buy my poultry and got poultry there. The next day I went back again and I met three boys outside the door of Chast's place, and they asked me my number, if my number was 23 Rutgers and I said yes. So they told me "You belong to Nierenberg and you got to buy poultry from Nierenberg". I did not listen then and I walked into the market. So they went after me and they went over to Chast and told him that he should not sell this man poultry because he does not belong there. Mr. Chast said "I will sell him poultry", and the boys said there will be a murder case if you sell him poultry. I seen Mr. Chast getting ready to put up a fight, and I walked out. They went after me and they got me by the collar and they put me in a car and brought me back to Nierenberg. I never seen them before.

(Witness leaves stand and examines defendants.)

I do not see any of them people.

I bought my poultry there of Nierenberg and the next morning I went back again to Chast. I told Nierenberg "I will go to the District Attorney". He answered me, he has him in his pocket. The next day I went back again to Mr. [fol. 544] Chast. That same thing—when I went to the market I met the three boys and they put me in the car and they took me by the collar and they brought me back to Nierenberg in their machine. After, I stayed by Nierenberg until he closed up his place and then I went back to Chast. Nierenberg told me to go back to Chast. When I went back to Chast he charged me about eight cents above the market. At the time these people took me by the collar and brought me back to Nierenberg, Chast was charging me about four cents above the market. I told Chast "What is the idea of charging so much?" He told me he is forced to give a certain amount to Nierenberg, but at the end of the week he took off my bill something like $15.

Cross-examination.

By Mr. Sager:

The Witness: Mr. Chast was willing to sell me but these strange men prevented him, and when I had some dispute

about the price, he said that on this occasion he took it off the bill at the end of the week. He didn't say he ever paid Nierenberg or anybody. He told me that he has got to give a certain amount to Nierenberg because Nierenberg closed his place up and he had some of his trade; that was after Nierenberg had closed his place up.

The following testimony was given by the witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am still in the chicken business. I do not buy in the West Washington market. I buy from the market men, slaughtered poultry. My experiences with [fol. 545] Mr. Chast and Nierenberg were about 1928 or 1929 when that corporation was. 1928 or 1929, I really don't remember. I think it was in 1929, about three or four months before the criminal trial. To tell you the truth, I really don't remember how long it was. I imagine it was three or four months. I could not tell you. I don't remember whether it was 1929 or 1928. I don't remember what year it was. I don't keep a record of that. All that I know is that some year I had some difficulty. I don't remember whether that year is 1927 or 1928 or 1929.

Q. Do you remember when the association was formed, the Chamber of Commerce?

A. I remember when it was formed, but I don't remember what year or month.

Q. I will tell you when it was formed. The evidence here shows that the Chamber of Commerce started to function in July of 1927.

A. Yes.

Q. Was it during that year that you had your difficulty?

A. Yes.

Mr. Kroppy: I move to strike out this testimony on the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 546] HARRY GLASSBERG, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I have been in the live poultry business last eighteen years. I was a member of the Chamber of Commerce. My firm joined in 1927. I cannot remember the month. I was only down there once. I attended a meeting of the poultry dealers of my borough during the summer of 1927 in 116th Street near Lexington Avenue. The president was Willie Simon. Those present were marketmen and members of the association of Yorkville and Harlem—members—Schiller and Josselson, Joe Mintz, Kaplan of Kaplan & Gold, Max Cohen's partner, Goodman Levy, Max and Samuel ——, Al Wickler, Max Romano, Mr. Kaye from the Columbia Poultry Company, Karp of Karp & Jaffe, Schiller of Schiller & Levy, Jake Reisner, Max Wolas, Rosen from Rosen & Wilkin, Louis Cohen, and some one from the Ideal Live Poultry Market, I think Harry Simon and Max Cohen.

Everybody had the floor. They were trying to organize a credit association and get their goods paid for from creditors. They said not to grab any customers, one from another; they just said to stick to their own trade; not to take anybody's else; but just to keep their own customers. They said that certain customers belonged to certain markets in the section where they are. I had customers on the [fol. 547] West Side and I am operating on the East Side. They took one away from me; they say I don't have to go on the West Side when I can operate on the East Side; they said I can save myself trouble of delivering to the West Side. That customer on the West Side, I gave him up. Before I went to the meeting I had about six or eight customers. I believe I gave up about two.

The presiding officer said that everybody will have to give up a cent a pound in order to hold up the credit of the association. I did not pay any money at that meeting. I paid

a cent a pound afterwards. I paid it to Louis Cohen (not a defendant), and Max Wolas, Jack Reisner and Morris Josselson. They came mostly together. I paid from $80 down to $50 or $40 per week for about six months. We agreed on a definite amount, $50. I refused to pay these people at a certain time in the fall of 1927. I spoke to Louis Cohen and Wolas, to the people who came around collecting, that we cannot pay that much. They said "You got to pay a cent a pound." I did not pay it for about five or six weeks. At the end of five or six weeks or during that time, I was without poultry a day or two; then we got poultry again. Before that, some of them came around and said if I will pay my dues, what I owe, they will let me load again. They were not the same people who had been collecting money from me before. When they came around and told me they would let me load if I paid up, I said I cannot pay it, I don't make enough to pay it. Later on, I did pay to somebody there to collect it; the names I was told, but who they were I don't know. When they came in, they said why I don't pay up these few dollars I owe, why I em- [fol. 548] ploy my shochet at the wholesale. It is a retail market and I am not supposed to employ him at the early market, and why don't I straighten out and pay these few dollars that I owe to the association. I paid them $150 in cash. When I paid them the money, they said nothing. I got my stuff again. During this time my shochet was taken out of my place for about three days. I haven't seen the people who took him off.

At these meetings they did not say what they were going to do with this cent a pound. I did not ask any one. Nothing was said at these meetings about prices; we kept on the regular prices.

Cross-examination.

By Mr. Sager:

The Witness: This was an association of the Harlem and Yorkville marketmen and we had a meeting up in that section. That meeting was composed of various marketmen in that section whose names I have mentioned, and some others that I do not recall. It was strictly a meeting of marketmen in that section to improve our credit situation. At that time we discussed among ourselves the prospects

of our business and among other things it was advised that we not sell out of our neighborhood. I gave up voluntarily two of my customers, not to anybody in particular. If I am not mistaken, our organization had the name Harlem & Yorkville Live Poultry Credit Association. We started paying a cent a pound some time during the summer of 1927, after that meeting; and then, later on, in the spring of 1928, I paid $50 a week regularly, instead of a cent a pound. I continued to pay that until the organization ceased. During two or three days I had no poultry.

[fol. 549] By Mr. Kaufman:

The Witness: I had difficulty with the teamsters' union and the shochets' union while I was making the payments to the association. The three days that I did not have poultry in my store was during the time while I was making payments to Louis Cohen or the other people that I mentioned.

Redirect examination:

The Witness: It was when I stopped paying that I didn't get any poultry. It is considered a small market. They wanted the shochet to come in at the retail hour. I wanted him to come in at the wholesale hour so I can give my customers the service in time. I believe that was because they took him off.

The following testimony was given by the witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am still a market man. I had some difficulty with the union between 1927 and 1928. I have not had any difficulty since that time. I do not know of any organization at the present time in the live poultry business. I have no difficulty in connection with the purchasing of poultry at the present time.

Cross-examination.

By Mr. Kroppy:

The Witness: Since 1928, there have not been any more collections made by the market men in the amount of one

cent a pound. Since that time, I have been able to buy poultry wherever I pleased, and that is true of all the market men in that section. I have been able to sell to [fol. 550] anybody I please.

Redirect examination.

By Mr. Rice:

I am at present a member of the Harlem & Bronx Board of Trade. I do not pay dues to that organization. I paid an initiation fee of $50 to the organization. At the meeting, I paid $50. There was a meeting of this association about four or five weeks ago.

I think it is a Credit Association. All of the market men in Yorkville, Harlem, Bronx, are members of it. No others. We just commenced to function about four weeks ago. At that meeting it was formed a Credit Association.

All the market men agreed that they would not sell poultry to a man who does not wish to pay a bill to the last market man. I adhered to that agreement. If a butcher or a retail poultry dealer comes to my market and he has not paid his bill to another market, I am supposed to sell him but for cash. If I don't want to give him any credit, I wouldn't give him any. If I don't know the man is good for the money, I won't give him stuff, if I know he is good, if he really wants to buy I will give him stuff and he should pay the bill, I will give him stuff. If he does not present a paid-up bill from the other market man, let him pay cash.

By the Court:

Q. In other words, you won't give him credit unless he shows the——

A. Unless I know that my money is good.

Mr. Kroppy: I move to strike out his testimony on all the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 551] Jacob Seiden, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The following testimony given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I have sold slaughtered poultry over twenty years on the East Side. Prior to August, 1927, I bought in a few markets on the East Side, but most of the time from Sahn and Wolf. On one Sunday morning in August, 1927, I came in to Sahn and Wolf, and I marked my poultry and I have to slaughter it. That was around 7 o'clock. The shochet was ready to kill the poultry, but Mr. Wolf calls me over and says, "Seiden, I am sorry, I cannot give you any poultry today; you have to go to Nierenberg to buy your poultry". I said, "Why this? Why didn't you tell me that an hour ago, when I could get my poultry. Now it is 7 o'clock. If I go to Nierenberg, I think I will go home probably without poultry." He told me "I am very sorry I cannot give you any poultry today". But I insisted that it was late "Now give me my poultry today and I will see during the day what I shall do tomorrow". He says "Nothing doing, I am not going to give you any poultry today if you paid a dollar a pound". After he called me aside and told me "I fought for you until 12 and 1 o'clock last night, but they wouldn't let me and I cannot give you any poultry, and that is all there is to it." The same day my brother-in-law was there, he also buys poultry of him, so I tell him, "Now you buy a little more poultry today". Wolf told me that it is no use for [fol. 552] me trying to buy anything, I must go to Nierenberg and I will not get any poultry anywheres else.

During the same week, my neighbors helped me out. This one gave me some and this one helped me out. Until Thursday, a marketman by the name of Altman met me in the Street and told me he was willing to sell me poultry.

Mr. Sager: We object to that.

Mr. Oseas: It is quite competent.

The Witness: I did not buy any place. But I had been in the market and I could not find anybody who wanted to sell any poultry. I went to this marketman and I bought from him poultry on Thursday and Friday and Friday I

told him, I said "Will I get poultry for next week?" And he says "Positively".

Mr. Sager: I move to strike that oue.

The Court: This is one of the marketmen, isn't it?

Mr. Oseas: Not a defendant; one of the marketmen from whom he could buy poultry.

Mr. Sager: Exception on the ground that it is not with any of the defendants.

The Witness: He promised me positively that I will have no trouble about getting my poultry. Sunday morning I go over there for my poultry, and this same Altman says "Seiden, I am sorry, but I had an accident by my partner, Mr. Belinsky," I said "What happened?" And he said "Some men came over and broke this Belinsky"——

Mr. Sager: We object to that.

Q. Did he give you any poultry after that?

A. No, sir.

Q. What did you do next?

A. What happened to the marketman?

Q. Never mind what the marketman told you. What happened? Wait a minute; just tell us what the marketman told you?

A. He told me——

Mr. Sager: I object to that.

Mr. Oseas: I offer it as being a conversation with a person from whom he attempted to buy poultry, explaining the motives of that person in refusing to sell him. It is absolutely competent.

[fol. 553] Mr. Kaufman: This is not a defendant?

Mr. Oseas: Not a defendant.

The Court: I will take it.

Mr. Kaufman: Exception.

Mr. Oseas: Not as proof of the fact but merely as proof of the motives.

Q. Go ahead; what did Altman state?

Mr. Kaufman: If it is not a proof of the fact, it is prejudicial to the defendants.

The Court: It is proof of the condition, as I understand it, which existed in the market at that time.

Mr. Kaufman: Exception.

The Court: As to whether there was a free and open market.

Mr. Kaufman: Not that conversation why he could not get it.

The Court: Yes, he is telling us what attempts he made to get it. It is some evidence as to why he couldn't get it.

Mr. Kaufman: Exception.

The Witness: I started to get from Wolf again. I was trying to go to Frankfater Bros. J. Frankfater and Hymie Frankfater. They told me they could not give me any poultry before they spoke to the big boss, by the name of Benjamin Simon. I went to Benjamin Simon and asked him to let me go elsewhere to buy my poultry. He asked me the reason why I wanted to leave this market. So I explained to him, I have to pay more for my poultry and not to get the poultry that I need for the price. Consequently, I cannot sell my poultry. He says, I should go home, and he will see that I should get better treatment. A few weeks passed and I seen it is no relief for me, so I had to go again to Benjamin Simon. That was four or five weeks before our Easter. Benjamin Simon told me he cannot do anything for me until after Easter. I had to wait until after Easter and then I [fol. 554] went again to Benjamin Simon. He asked me where I wish to buy my poultry. I told him "I think I am old enough to go wherever I please, because I am doing business in my name, and what is the use for me to tell you, but it is my own will, because anyone else will do the same ~~to me~~ and this I ~~don't~~ want. I want to go wherever I please". ~~He~~ says "This you cannot have". I insisted that if I cannot get any transfer to go elsewhere to buy my poultry, I am going to close up my store.

When I talked to Benjamin Simon, Louis Weidberg was present. I told Weidberg "It is no use for me to stay there because we cannot buy equal with these others" I says, "Why don't you help me so I will be able to go away from them". So Louis Weidberg helped me, and I went in and Benjamin Simon allowed me to go to Frankfater Bros. When I spoke to Louis Weidberg there was nobody else present. I stayed by Frankfater Bros. a few weeks and suddenly one day he raised me about two or three cents more. So I asked Jake what is the reason; I said, "You agreed to sell me poultry at a certain price". He says "Why, I cannot answer this", he says, "I am compelled to do it". Then I met P. Lipschitz in West Washington

Market and asked him whether I could not get him to sell me poultry. He told me "I would be glad to sell you". He has the Pitt Street Poultry Market. Sam Isaacson is one of the partners. The third one I do not know. I did not have any conversation with any of the Pitt Street people.

I was paying to Sahn & Wolf, before I left them, two or three cents above the quotation market, and then the price was five, six, seven and eight cents. Sahn of Sahn & Wolf [fol. 555] is not the defendant Samuel Sahn. Wolf told me not to sell any butchers.

Cross-examination.

By Mr. Hallheimer:

The Witness: I went to see Mr. Benjamin Simon, all told, about six or seven times, maybe ten; I can't recall exactly. I saw Abe Wolf and he told me to go and see Mr. Benjamin Simon. I went there myself. The second time I went myself, nobody told me. After I saw Simon, I went back to Wolf. After I went back to Mr. Wolf, I went back to Simon again about two weeks later; I did not have anybody with me when I went to see him. When I was up to see Mr. Simon, I told him Mr. Wolf was not giving me the proper kind of poultry; that was one of the reasons I wanted to change. I have been in the chicken business for over twenty years. I did not know at that time that the various marketmen were only carrying sufficient poultry to supply the needs of their customers.

Mr. Kaufman: I move to strike out the testimony of this witness on all the grounds previously urged.

The Court: Denied.

Mr. Kaufman: Exception.

[fol. 556] Morris Bloom, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by this witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I am in the live poultry business in the Bronx. Benjamin Panish and myself and a brother of mine, Isidore Bloom, are associated in business as the Panish Live Poultry Company since January, 1929. Prior to January, 1929, my brother and I conducted the same business as A. Bloom, Inc., for three years. Between the summer of 1927 and the summer of 1928 I attended six or seven meetings of market men of the Bronx. The first of those meetings was held about the middle of 1927. It was once in awhile we would have a meeting. The last meeting was about the middle of 1928.

Goldberg or Rosenbaum of the Webster Poultry was at these meetings. I would see Max Rosen there occasionally. Kalman Gross was there. I have seen Mr. Hornstein of Spatz & Hornstein Poultry Co., at one or two meetings. I don't remember the particular names, but there were quite a number of marketmen from the Bronx. I could much easier tell you the firms that were represented there. Webster, Schonzeit's, Tremont. The owners of this Tremont were Jaffe and Greenstein. H. Raby's. Halpern of Max Rosen's place. The F. G. T. was represented there also. Sam Friedman and Goldberg of the Pullman Poultry Company, and Rosenthal of the Casanova came once in awhile. Max Sokoloff was there on two or three occasions.

[fol. 557] Most of the discussions were in reference to credits of the various customers of the poultry slaughterhouses; that it was pretty bad and that something should be done to make those butchers pay their bills more promptly. We spoke about one market not selling a customer of another market unless he had a paid bill, and so forth. They talked about certain dues to be paid in order to run a credit system; each one was to pay $50, $75 or $100. The one who had more customers would naturally pay more for his protection; that the next man would not sell a customer unless he had a paid bill. The amount to be paid was decided on the basis of the amount of poultry that they were selling. At no time was anything said about how much a pound he would pay. They would say, being as he sold more, he would have to pay more than a man who sold less. I sold about 30,000 pounds per week and paid $75 a week about eleven to twelve weeks, and then I paid $100 a week for about the same length of time. Sam Gold-

stein collected the first few payments and after that Louis Spatz collected. I don't know how the money was to be spent.

I paid a Mr. Dolobovsky about $150 or $175 a week for six or eight months. He had a few customers that it was hard for him to serve with the amount of business that he was doing, and I made an arrangement with him that I would serve that amount of trade that he had in my place, that it would cost me cheaper to serve them than it would cost him and I would pay him so much a week for him to let me do that. Mr. Spatz helped me make that arrangement. We talked it over with him that it was hard for him to serve his customers. I don't know the exact amount of business he was doing, but I do know that he did a very [fol. 558] small business in comparison to what other markets were doing.

I will tell you in what way it is harder to do a wholesale business than it is to do a retail business. You take a wholesaler, he goes down to the railroad and buys about five or six varieties of poultry and takes it to his place. He has a larger place in which to place that poultry. When his customers come to buy, he can pick any poultry that he wants either from this market or the next market, whereas a retailer which is considered a small place of business, he cannot go down to the railroad and buy five kinds of poultry. He takes in a few coops of a certain mark which probably don't suit every customer he has, and naturally it is harder for him to serve more people than a certain amount, and to serve forty accounts in our line and ten accounts cost just as much.

He sold me about six or eight accounts, which amounted to about 6,000 pounds a week. When he did a retail business, he still had to go down to the market and truck poultry up to the market; the only thing is, instead of trucking six or eight coops, he trucked fewer coops, and he still stayed at the same place of business. I want to tell Mr. Oseas he is jumping at a conclusion too fast. I want to make you understand, if the Court will allow me, that in order to serve these butchers, this same man would have to have two men and a shochet, which would cost him about almost $180 to $200 a week to serve those six or eight butchers; although it might seem a few to you, but that is the service they require; also that he would have to go down to the market for poultry

every day, whereas for the retail trade, he could go down Thursday or Friday for his few coops, and he would have [fol. 559] enough for his retail line. These transactions of selling customers back and forth were not talked about at the meetings.

I don't remember having any conversation with any member of our association at all as to what happened to the money that was collected every week. When Spatz came around to collect, he did not say whether or not other people were paying. Spatz never told me what he did with the money he collected. I do not know that more people paid besides myself, from the meetings we had, we all agreed to pay; people agreed to pay at the meetings, and I took it for granted they were paying since they agreed to pay those amounts. I know a man by the name of Mr. Mast. He never looked at my books. I made a payment to three gentlemen came in at one time to my office, Wickler of Wickler & Diamond, Grossman, and I cannot remember the third. They said they wanted to buy a present for Mr. Spatz. I gave them a check for around a hundred dollars. At that time those three gentlemen showed me a bunch of checks; they told me that everybody contributed towards this present and it would be just as well for me to do the same thing. They were all in the same line as I am. So I didn't question any more, and made out a check and handed it over to one of the three gentlemen. I did not pay any money to buy a present for any one else, on any other occasion, for any other marketman. They said they were going to buy Spatz a car; they didn't say what kind. I do not know whether or not they did buy him a car with that money. These payments were made mostly by check.

Cross-examination.

By Mr. Jacobson:

The Witness: I had talked over with Mr. Dolobovsky the amounts of business he did. He was my brother-in-law and [fol. 560] I knew exactly the amount of business he was doing. I knew, more or less, that it was not paying him. He was doing about 6,000 pounds of business in my place without going to any extra expense. The gross profits that I would make on those 6,000 pounds would be more than $200 a week. I could pay him $175 a week and still make a

little money out of it, while if he did it himself he would lose money.

These meetings at the Bronx Casino were not meetings of any association, but were meetings of the Bronx marketmen. Our meetings were about the Bronx business only. We were not bothering about Brooklyn or Brownsville, or the East Side, or Borough Park, or any place else. When we were discussing this credit matter in the summer of 1927, there was a subject for discussion among us marketmen in the Bronx for several years before. I began about May 1st, 1927, and for ten or twelve weeks, I paid $75 a week to the first credit association. This credit association broke up in the Bronx in No-ember, 1927. After we had stopped for quite a while, we formed a new credit association again, along the same lines; that lasted again ten or twelve weeks. In the second period I paid $100 a week instead of $75 a week. When I took over my brother-in-law's wholesale trade, it merely was transferred and I actually continued the business and did not refuse to sell any of those butchers.

Redirect examination:

The Witness: The way Dolobovsky transferred his wholesale accounts to me was that he would take the orders himself over the telephone, or some of them may have standing orders, and instead of sending them from his place, [fol. 561] he would send it from my place. He probably explained to them that they would get better poultry from me than they would get from him. The first few days he transmitted the orders there himself. After that, the butchers all remained my customers.

The following testimony was given by the witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: There was a credit association in the Bronx in 1927 which lasted six or eight months. I paid to that association $75 or $100 a week. Those payments continued from some time in May of 1927 to the early part of 1928. Since I ceased making those contributions of $75 or $100 a week, I do not know of anyvody making contributions to

credit association in the Bronx. I have never had any difficulty in buying poultry anywhere at any time.

Mr. Kaufman: I know the facts, Mr. Rice.

The Witness: I have not heard of anybody having any difficulty in the poultry business since the summer of 1928, only if his credit was bad, that is all.

Redirect examination.

By Mr. Rice:

The Witness: I recall when Ole Salthe came into the business, as the Dexter Live Poultry Company. I can't tell you when that was. I wouldn't say that that caused the breaking up of the association. We had this association for about four or five weeks after Ole Salthe started in the Bronx. It [fol. 562] went right ahead. I never saw Salthe attend the meetings of the association in the Bronx. I don't know if he paid any money to the association. I suppose he sold to any butchers or retail dealers that came to his market. I recall that he ordered about six carloads of poultry from the West every week, and operated a commission house as well as a market at that time. After Salthe came into the business, the association broke up around four or five months later. If they got together again, I don't remember. I don't remember that a committee of Max Sokoloff and Samuel Goldstein and several others was appointed to go to see Salthe in the summer of 1928. I don't know of any agreement between Salthe and the marketmen in the Bronx.

The association broke up a long time before the criminal trial. It was more than several weeks, but I can't recall as far as six months away.

Recross-examination.

By Mr. Kaufman:

I stopped making payments to the association early in 1928, and if that criminal trial started in October, 1929, the activities of this credit association ceased quite over a year before October, 1929.

Mr. Kroppy: I move to strike out the testimony of this witness on all the grounds previously stated.

The Court: Motion denied.

Mr. Kroppy: Exception.

[fol. 563] SAM KAMCHI, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by this witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I was present at a meeting of dealers and marketmen between the 20th and 25th of August 1928, in the Bronx Casino. There were present about twenty-five poultry dealers, no butchers. Sam Weiner was there. About four or five marketmen were present, Sokoloff, Louis Spatz, I. Frank and Sam Goldstein. Sokoloff asked us what we wanted, because we called them to the meeting; the poultry dealers called them to the meeting, so they asked us what we wanted. We told them we wanted open doors. That means that every chicken dealer should buy his poultry wherever he wanted it; if he pays or if he don't pay, it makes no difference. They told us they will let us know next Monday but did not do so. Our president, Sam Weiner should let us know.

I have been in the poultry business six years, selling only slaughtered poultry. Between the summer of 1927 and the summer of 1928, I bought from the Monroe Poultry Company. The owner of the Monroe is Aaron Steinberg. Matofsky was working there. I paid for my poultry at the Monroe, before the summer of 1927, three cents above the market. In the summer of 1928, he started to charge me six cents. I asked him why he charged me so much and he says "I got to charge you that price. I got to pay a [fol. 564] fine". He did not say who would fine him.

Mr. Kroppy: I move to strike out the testimony of this witness on the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fols. 565 & 566] BARNEY HECHT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony given by this witness at a former trial in Oct., 1929, was read in evidence pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

I have been in the live poultry business twenty-three years now on 7 Jackson Avenue, Brooklyn. I buy live poultry and sell wholesale and retail. Prior to the summer of 1927 I bought live poultry at West Washington Market and at the railroad terminals—on the Erie, on the Delaware, on the New York Central. The Erie Railroad is on 14th Street, Jersey side. The Delaware is in Hoboken, New [fol. 567] Jersey, and New York Central at 60th Street, Manhattan. No other railroad. After I bought the poultry I got my own truck to bring it over. We sell them alive and kill them. After our customer picks out the live poultry we kill it for him. The poultry is slaughtered by the rabbi, the shochet, who works for me.

I did have conversations during the summer of 1927 with some of the defendants. Tootsie's brother and Wiener and one of the Rosensteins. (Defendant Charles Herbert stands up.) That's the man. (Joseph Wiener stands.) He was there at the time, too. I don't know his name, but I know he was there with them. Tootsie was there also. Here is Tootsie Herbert here (identifying the defendant Arthur Herbert). There were five or six people who came in at that time—Tootsie, Charley Herbert, Harry, his brother, and Arkie.

Sidney Rosenstein was not there. They came around and told me, "What are you getting for poultry?" I told them my price is 31 cents a pound. So they said, "You got to sell 42 cents," so I said, "Who said so?" They told me it is an order of Samuel Sahn. He is right over there (identifying defendant Sahn). They told me they are going away and will come back and see if I get a full price. If I don't they are going to hit me. On that day I pay 26 cents. A little later, in about half an hour, they came back. I had the prices marked in the window 31 cents. One of the fellows took a towel there where the women wipe their hands, and he rubbed off the sign. One said, "If you don't get a price"—one of the guys got hold of me by the coat

and says, "Come out here, come right outside, I am going to kill you to death." The one by the name of Wiener said [fol. 568] that. I said, "I am going to get my price." "I am going to call a cop up if you start to bother me." About an hour later Tootsie came in and said, "Why don't you try and get a price? If you are not going to get a price I am going to put four men in your place." I said, "I cannot get no 42 cents a pound, that is highway robbery, I am going to spoil my business." Then he said he will send two women inspectors, he sent out, how much you sell poultry. If you see two nice-dressed women you should know that's who they are, they will say that you sell 42 cents a pound. About a half an hour later those two women came in and I told them—they asked me what is the price and I told them 42, but I didn't make no sale. I went to the telephone to try to get somebody, but I couldn't get nobody. When those two inspector women came in and asked me, "What are you getting for stuff?" I told them 42 cents a pound, but I didn't sell them nothing. I went in the office and tried to call up. I waited until they went away and when they went away I tried to sell my poultry again for 31 cents. Then in time I came over to the market on the railroad and they bothered me. They steal the poultry out of my truck. They break open the crate, take a hundred pounds out, fifty pounds out. One of the men, Fishman, called me and said, "Why don't you join our association, the Chamber of Commerce?" I said, "I cannot join it." He said, "We made an association for you to make money—" This was in October, 1927. Hyman Fishman was working for the Chamber of Commerce. He said this to me. He said, "If you don't belong to the association you won't get any poultry," and in time I went over to the railroad. I went over on the Erie Railroad and I met one of the men, Tootsie's brother. He is sitting right over there, this fellow (indicating), and he said to Julius Rosenstein, who is there, and Arkie—he said, "That-son-of-a-bitch is here, we got to kill him here." They put one truck in the back of mine and [fol. 569] two trucks on the side, and one of the men named Arkie got on the truck, and another man said, "Give it to him," and he smashed my truck. Then they threw manure in the face, dead chickens in the face, nails in the face, and

when I start to holler "Police!" my face was all blood, and then he said, "We got to kill the bastard, we got him over here, we got to kill him." Then I went out. I didn't want any more poultry. I went over to West Washington Market and I said, "I cannot get any more poultry, to hell with the poultry." I used to go over to the market and buy from somebody a few crates of poultry, and I went home. In the middle of March I went over to the New York Central Railroad for poultry. One of the men named Nigger—Feinstein is the foreman—he came over to me and says—he had some paper—he said, "Barney Hecht, you are on the blacklist, you cannot get any more poultry." I said, "Why cannot I get poultry?" He said, "You better go and see Mr. Tootsie or Benjamin Simon, they will tell you if you get poultry or not." I stood a little and said, "I can do nothing," so I went to the office of the Chamber of Commerce. When I came to the Chamber of Commerce, that was Tuesday, I waited from the morning until 5 o'clock until Mr. Simon came in. Mr. Simon came in. I said, "Mr. Simon, why cannot I get poultry?" That is the man (indicating). I said, "Why cannot I get poultry?" "Well," he said, "you have to belong to us." He gave me a card I should sign. He said, "You got to pay 10 cents for every crate, how many crates you sell," and $50 a week I should pay to the association. I told him I wouldn't do it and I said to Mr. Simon, "You ain't got no association, but you got a blind trust. If this came up in court you go to jail with the rest of them; you remember three years ago when they tried to convict Sam Sahn and the rest of them," and Mr. Simon says, "I am working for a bunch of crooks, what can I do?" This fellow said he is the main man (indicating). Mr. Sahn told him he should go ahead and do [fol. 570] such things. He said, "Why, this thing would not go," he said, "I am going to resign—I won't work any more for you. They are going a little too far." I said, "I want to get poultry," and I said, "Don't you think, Mr. Simon, I know everything?" I stated, "Mr. Simon, a few butchers came over to me and told me what they are doing with him. There was a butcher bought of Sahn stuff, and then refused to buy from Sahn stuff, and a few gangsters went up to his house, grabbed him, put him in a machine like a bale of hay. Is that legal?" Simon said, "I know it is illegal and I am going to resign." Mr.

Simon said to me, "I am going to see to-night Tootsie, and if you will go to the market you will be able to get poultry." I said, "Why don't you try it now, call up Tootsie and tell him to give me poultry, so I will be able to get it to-day yet. It is 5 o'clock. There is stuff in the market." And Mr. Simon said, "I can't find him. You don't know where the bums are laying around, but I am going around specially to-night to see where I can find them. If I find them you will get poultry." I said, "You can locate him." He said, "You can go to-morrow on the railroad and get poultry."

On Wednesday morning I went to the railroad and Nigger Goldman came along and he said, "Don't go in the yard, you are on the blacklist, you can't get any poultry." (Defendant Goldman arises) There he is. He said, "Don't go in the yard, you cannot get any; you are still on the blacklist." He said, "Go over and see Simon; see Tootsie." I went over in Simon's office, Benjamin Simon, and he was not in the office yet—in the Chamber of Commerce.

Q. Go ahead.

A. I went over to Newark to try and get poultry and they refused me. They told me, "You must have trouble in New York so we can't give you any poultry."

Q. Who said that?

A. In Newark, I was over by Newark. There is two railroads there. They told me I can't get any poultry. One [fol. 571] fellow from Passaic was there and he told me, "You cannot get any poultry." He told me, "We are afraid to start out with the New York gangsters.

Mr. Shalleck: I move to strike out that testimony as not binding——

The Court: He can state that they refused to sell him poultry.

Mr. Oseas: A man may also state why.

The Court: Overruled.

Mr. Shalleck: Exception.

I went back to the market to find Mr. Simon, West Washington Market. I said, "Mr. Simon, I cannot get any poultry", and he told me I shall go over to the railroad and

everything will be all right. They won't give me any poultry. Mr. Simon said, "Well, we will see Tootsie". Tootsie came over and it was very near a restaurant, and they went both in the restaurant, and Mr. Simon told me, "You better wait outside and I will have a talk with him". They were talking about half or three-quarters of an hour. I went and I said, "Mr. Simon, what is it?" Tootsie said, "How many corners has a crate?" I said, "Four". Then Tootsie said, "You got to have four men in your place". I said, "You spoil my business entirely; you want me to have four men. I used to sell thirty-five crates of chickens a week and now I sell four." In a minute Charley Herbert came in and said, "Tootsie, did you know he has got his machine outside? I was going to take his machine and throw it in the river, but he has a man watching it." He wouldn't let him take the machine away. I left the machine near the traffic cop, they shouldn't take the machine away. I went out and I found Mr. Hirshon, the president of the Chamber of Commerce on the stand. I says, "Mr. Hirshon, I am twenty-two years in this business and I am entitled to [fol. 572] have my few coops of poultry and you want to chase me out of business entirely." He says, "Why don't you pay him?" I says, "I would not pay him and give you $50 a week because I cannot afford from him much I sell. The profits do not allow me I should sell as much." He said, "Why don't you go over to see Tootsie?" I said, "Why should I see Tootsie? Tootsie told me I should get four men in the place, four men, you know, on the average. I don't need four men in the place." Mr. Hirshon told me, "You should go home and close the door and take a gas pipe." That is what Mr. Hirshon told me.

I says, "Very good, Mr. Hirshon." Then I went over to see Mr. Sahn and I says, "Mr Sahn, why can't I get poultry? Why can't I get poultry for cash? I went all around looking for some poultry." He says, "Why don't you see Tootsie?" I said, "Tootsie told me I should get four men." You know everybody close their doors to me. I says, "I am not going to get anything of him, he tried to shoot me, he was going to shoot me." He says, "You are not going to get anything of me." I says, "All right," and went away. I went back in the machine. I went there, I went back and tried about twenty places, I tried to get from them chickens that I would be able to sell on Thursday.

Mr. Sager: I object to that.
The Court: He says he tried to buy chickens.
Mr. Sager: We object to that.
The Court: Objection overruled.
Mr. Sager: Exception.

A. (Continuing:) They all said——

Mr. Sager: If your Honor please, I object to this testimony.

The Witness: They all said, "I am afraid to give you the stuff".

Mr. Sager: I object to what was said.
The Court: Objection overruled.
Mr. Sager: Exception.

[fol. 573] I was over by Sol Phillips, and I was over on Siegel Street by Feldman, and I was over in Prospect Avenue—I was over to about twenty fellows and I could not tell you all. They would not sell any chickens. I left my machine right there on Park Avenue and I went back to Wallabout Market and I see a fellow named Jake Harrison, he was one. So I says, "Harrison, why can't I buy some poultry?" He says, "You are on the blacklist and I can't sell you any poultry." I says, "Why can't you sell me any poultry?" I says, "I will pay you the same price that you can sell." He says, "Well, I am afraid; how can I do it?" I says to Harrison, "What do you want to take poultry and give away to butchers and have to collect the money the next week?" I says, "Mr. Harrison, here is United States money, hundred-dollar bills, how do you like it?" He says, "All right," he says, "but I will give you poultry, but you cannot load it now, it is too light. You wait until it gets dark and then we will give you poultry." When it got dark, about 8 or 9 o'clock, I went over and he gave me poultry and loaded me up, and he says, "I won't give you any bills, and I won't give you any paper, nothing at all." When I came home with the poultry he sold me, were leghorn fowl, about twenty-five or twenty-six—myself I figured out that it cost me 42 cents a pound and I sold my stuff for less, I sold it for 34 or 35 cents a pound.

So when it came on Thursday afternoon, that was very rainy, and I went over to West Washington Market and tried to get some poultry. First I went then to Rosenstein's stand. I took my coat and I covered myself over,

nobody would see me. I went into Rosenstein's stand and I says, "Mr. Rosenstein," I says, "can I buy a few poultry?" He says, "You are on the blacklist." But I says, "If you give me I will pay a couple of cents a pound." He says, "I am going to sell you, but you got to come around Friday morning at 4 o'clock before the workmen come in." [fol. 574] I came around not four, but I came around at three and I was waiting when he came in. He started to beat up the stuff and I waited until he got everything ready, which was about a quarter to five. And I was going to load on the truck my own poultry. This was in the middle of the month of March, 1928. He told me he was going to sell the poultry. I got there around 4 o'clock Friday morning. I came in at 4 o'clock in the morning and he told me, "Wait until he feeds them up and then we will give you the stuff." That was about a quarter to five. I was ready to load up, and one of his men came in by the name of Schimmel, they called him, *he came in and says, "Don't* load up for him, he is on the blacklist. I am going to tell Tootsie, I am going to tell Simon." He says to me, "You cannot get any poultry, pull out." I pulled out. And I saw a little light burning in the Hudson Poultry Company. I went to the Hudson Poultry Company, and I says, "Can I have a few coops of poultry?" He says, "What do you want?" And I says, "I must have poultry, I must have a coop or two of poultry." He says, "All right, we will give it to you." I started to load up one or two crates, I loaded up eight crates, and one of his workmen came around and says, "Hey, what are you doing, what are you giving that fellow, he is on the blacklist?" So this fellow says to take the stuff off from the machine, so I says, "You will not take the stuff off the machine because I won't let you." I says, "You want to give me some?" And he says, "All right," and he says to me, "Go away as quick as you can." So I went home.

Then Monday I tried again West Washington Market for poultry and they told me I could not get it, so I went over to Philadelphia and I bought poultry in Philadelphia. So one of the men, Harry Shomer, came over. Here he is, that is Harry Shomer (indicating). He says to me, if I am going to bring poultry from Philadelphia he will put me in the ditch, going to kill me. I says, "Then I will be dead." Then he said, "If you want to bring any more

[fol. 575] poultry, if you bring poultry, your life is in risk." And he says to me, "If you want to bring poultry, you can bring your own truck because we are not going to load it for you any more poultry." So I went with my own truck and I took and I came back. That was in April, 1928. I went over to Newark and I bought a little poultry, and he came, that Harry Shomer, and there came a couple of fellows, and he told me, "If you are going to get poultry we are going to kill you." I said, "Then I will be dead and I won't have to die twice." That is all I said. There was Easter, Easter when they sold poultry for 45 and 50 cents, and after I sold my poultry for 35, so what they did to me. Simply came around on one Saturday with a gang and they put two fellows who put signs in front and back, in front of my door, and it says, "This place is on strike." That was in April, same year. I bought in Philadelphia three or four times about. Tootsie and his gang stood on all four corners and customers that was going there to buy chickens he told them, "This place is on strike, you should not go in there, your life is in risk, don't go in." These two fellows were walking up and down all day on Saturday in front of my place. I don't know the two fellows. They were workingmen, but didn't work for me. My workmen did not go out at that time. They were inside. They stood on the corner and when any customers come in—that was Saturday. On Monday they started up again. And one of them says, "How about Shapiro?" I telephoned him and he says, "I will be over," and Shapiro said, "What do you want of this man?" So Shapiro, the president of the shochets, came over to me in the place of business and he says, "You got to go out on strike, if you would not have any more union men they have got to go out on strike."

And Shapiro talked with Tootsie and then he came over to me and he said, "Now, listen"—Shapiro says to me, "If you will be a good boy and pay the price we will let you [fol. 576] have only one man, only one man you have to have in the place." I says, "All right, I will do it." So they put a man in the place, and the man did not do any work, di'n't do a thing in the place; only was sitting and smoking cigarettes and reading the paper. At 4 o'clock he went home. So one of the men, Harry Shomer, came over to me and says, "What do you want to go over to Philadelphia to buy poultry? You are all right now; you can get

poultry in New York." So I says, "I will see what it is, they mean an association, but I say they mean a trust." So I went over, I went over to New York to buy poultry, and as soon as I put my machine in front of the New York Poultry place I saw a fellow go with a knife and cut my four tires in the machine. That man who cut my tires, I know him in the market, but I do not know the name. He talked before with one of them named Weiner (the witness leaves the stand and goes to the body of the court room). This is not the man, some other fellow (pointing to defendant Joe Weiner). I went to him and I started to get my poultry right straight along. I didn't get any poultry from the West Washington Market. I was getting my poultry right straight from Philadelphia. At that time that my tires were cut I did not have any conversation with any of the defendants. I saw Shapiro the day before he put one man in, but when he cut my tires was about two or three weeks later. I did not have any conversation with any of the defendants with regard to getting money from the Chamber of Commerce. When I came over for poultry, to help me out with a coop of poultry, Morris Damsky said, "I am getting $200 a week," he says, "off them and I do not want to start up with them, and I won't give you any poultry." This man over there (identifying the defendant Morris Damsky). He is the only one I talked to there. He says, "I cannot give you any poultry," he says, "I am all right, I am getting $200 a week from the association and [fol. 577] I would not go to give you any poultry." That was on March 28th, 1928. In my conversations with the defendant Benjamin Simon he told me if I would not join the association they would make me take four union men in. He says to me, first he wants one cent a pound when I sold 7,000 pounds a week, and when I sold only about 800 pounds a week, then they wanted $50 a week. That was March 28th, 1928. That conversation was in the Chamber of Commerce. He later said he would take $50 a week. That was in March. That was when they stopped me buying poultry. I had two conversations. The first was in September, 1927, and the second one in March, 1928. In September, 1927, I was selling 7,000 pounds a week; in April, 1928, 800 pounds. On the occasion of which I spoke where I went over to the Erie terminal to get some poultry, I saw Sammy Sahn. He was alone. He saw what they were doing to me

and he said, "Give it to him." He says that to Arkie and Manny Herbert and Julius Rosenstein. Arkie's name is Weissler. My tires were cut on a later date. On the day my tires were cut I did not see the defendant Arkie Weissler around, but I saw Joe Weiner was there at the time. When I speak of Joe Weiner I mean somebody else, not this defendant. Max Kessler—that is the fellow there, he always stopped me off of stuff. He came around and said, "Stop the poultry; stop it." He was the stopper in West Washington Market. He said that a number of times. On those occasions I didn't get poultry; they would not let me get it. I came down, but didn't get poultry. On the first occasion when people came into my store and Weiner grabbed hold of me; this Weiner was another fellow. Defendant Weiner was with them, but the other fellow got me by the coat.

I saw this defendant but I do not know the name; he was in my place of business.

[fol. 578] Cross-examination.

By Mr. Sager:

I came down about four or five months after August, 1927, and they stole a lot of poultry out. I go down one time and buy ducks, and they stole the coop of ducks off. I got the coop of ducks on the machine and they pulled the coop of ducks off the machine, and I backed the machine and got the coop of ducks back. Then when I bought two coops of poultry off Garlick & Dinerman. I tied them with a rope, a hundred feet, and they cut the rope off and tried to get these coops of poultry off it. They followed me with the chickens and they tried to get the crates off.

I could not buy any chickens in Newark. I went over to Neuman and I went to another man. Neuman's concern is the Newark Poultry Company. That was in March, 1928. In Newark I also attempted to buy chickens from a man by the name of Morrison; he is in Passaic, New Jersey. He is in poultry over in Newark. He refused to sell me chickens. Those are the only two fellows I went there.

I bought chickens in Philadelphia; some of them refused and some of them sold me right away. I cannot tell you the name of the company who refused me in Philadelphia.

I undertook to buy chickens in New York here from commission men; they are men that receive the poultry in cars and put them in coops or crates and sell them to the dealers. I do a retail and wholesale business. I sell whoever comes into the place. I did not hire any men from the chauffeurs' union at any time. I did not hire any workmen from them; I got my own men. The shochet I have myself. The shochet was not a union man when I employed him. The shochet I had one time he died, and then I took another man and he told me he would never be a union man; he told me he would not be a union man and then he [fol. 579] joined the union, and what am I going to do about it? I did not want the union men. Shapiro was president of the shochtim's union. The Herberts, they are members of the chauffeurs' union. I didn't have any trouble with the union at all. The trouble was started when they made the Chamber of Commerce, that was where all the trouble was. I did not join the Chamber of Commerce. I was a member when Major L'Esperance was there and we paid 10 cents for a crate, and when that was passed I said no more because I cannot say how many associations they have. There was an association of men in our business over in Brownsville. I never attended its meetings. They did want me to join that association and pay $50 a week. I am in Brooklyn. I am in Williamsburg, not Brownsville. They never had an association there, only the Chamber of Commerce. They had one about five years ago. They did not have one in 1927 and 1928, I am sure of that. They had a Chamber of Commerce; that was all that they had.

I bought poultry at wholesale at 29 cents a pound and sold it for 34; that five cents profit includes cost of killing, rent, help and everything. I slaughter my chickens for the wholesale trade. I work myself and I try to make an honest living. I am working from six o'clock and stay until four. If it cost one cent, you know, shrinkage, say four cents profit on all expenses and I make an honest living. That leaves me four cents a pound profit. I pay my help out of that. On 7,000 pounds I make $280, and out of that I pay my help and expenses. I am satisfied if I make $50 a week after all expenses.

Harrison is not a commission man, he is a man the same as I, wholesale and retail man. I bought right straight

along in 1927 from the commission men in New York. In March, 1928, they stopped me off the stuff. I couldn't get any more. I was over by Kastein's and over by Norris and Nigger came and said, "Don't sell him poultry; he is [fol. 580] on the black list." I talked to Norris' weighmaster, Dan, and I spoke to Mr. Norris, too. Mr. Norris said, "I am going over to see President Herb Frankel," and he went over and came back and says, "I am sorry you got trouble with the association; you better go and settle it." It was in March, 1928, I went to Mr. Norris and tried to buy chickens of him and he told me to see Mr. Frankel, the president of the association. I tried to get poultry from Julius Kastein and he refused me; that was at the same time I had been to see Norris. He said, "You know, you cannot buy poultry." This fellow Kessler followed me every place I went. There is no use going there; he followed me every place I went. He said to the man, "Don't load him any poultry, don't load him any poultry." I don't know whether Kastein is a union man.

At one time I had some stock in the Community Poultry Company. They forced me in, I couldn't get any poultry so I had to join the Community. I managed one of the branches of the Community Poultry Company. I was not discharged; they didn't let me go; they didn't pay me; they owed me about $3,000, they didn't pay no wages; they were supposed to pay rent, wages and expenses, and didn't pay nothing. They told me the association didn't make any money so I have to go and fight them in the court. They arrested me and I arrested him, too.

[fols. 581 & 582] Cross-examination:

When I went over to Newark to buy chickens, one man over there told me that I must be in trouble in New York, and he didn't want to sell me any poultry. That man was Morrison. He has his place in Elizabeth but he handles one car or two sometimes a week on the Newark railroad. He unloads in Newark. I met him at the terminal in Newark, at the car. I know him very good. He used to come to me often for poultry. I don't know under what name he does business. The man I met from Passaic is the same man. He is the man I saw there. He said he can't give me any poultry because I don't want any trouble with New York gangsters.

I tried to buy poultry from Harrison here in Brooklyn. He is a retailer. I asked him for a favor, he should sell me stuff because I ain't got no poultry for to-morrow's trade. He said he is afraid to sell me on account of they wouldn't sell him. I don't know whether Harrison could not sell me live poultry under the law because there is an ordinance or State law that prevents him from doing it. I asked a man named Phillips to lend me a coop of stuff for my trade and he said he is afraid from gangsters. On direct examination I said I tried to buy from Phillips. [fol. 583] Phillips is a retailer. I don't know of an ordinance or of a State law that requires any person who is engaged in selling live poultry to have a license. I have been in the business twenty-three years. I have been in the slaughterhouse business.

Q. Don't you get a book every year with the New York laws and rules and regulations of the Health Department governing your business?

A. I don't look on that. We don't sell no live and I don't look on that. I didn't read it. I did my business regardless of the rules and regulations.

Cross-examination:

The first time that I went to see Mr. Simon was on September, 1927. I never saw him before that day. I saw him three years ago in the office of the Attorney General of the State of New York, 51 Chambers Street. I was there at that time as a witness against the Community Live Poultry Company. Mr. Simon at that time was connected with the office of the Attorney General and he was investigating the Community Live Poultry Company. I joined the Chamber of Commerce in June, 1926. While I was still a member, L'Esperance became the supervisor. I saw Mr. Simon in the Attorney General's office when I was a witness against the Community Live Poultry Company quite a few times. After Mr. Simon left the Attorney General's office and became supervisor of the Chamber of Commerce, I met him in 1927 once and I met him in March, 1928, and that is all.

The Community Live Poultry Company was an association in Brooklyn. They owed me $3,000 and I owed them $700. They didn't pay me no wages or nothing, so when they give me the goods I had to pay off the people. I didn't ask Mr. Simon, after the Community Live Poultry case

was over, to see whether he could cancel the indebtedness of the Community Live Poultry Company against me.

[fol. 584] I did not talk with Mr. Forsmith. I am in bad favor with this man, I never talk to him, never see him, I am in bad favor with him since the Community bust up. I don't know Mr. Reisner, sitting here, at all. I don't remember nothing about going to Libby's Hotel in 1927. I was never in Libby's Hotel. I did not belong to the Live Poultry Dealers' Board of Trade of Greater New York.

I don't talk to Mr. Forsmith. I seen him pass through in the market but I never talked to him. From 1926 down to the present time I had no conversations with Mr. Forsmith. I know Mr. Phillips. I know a man by the name of Louis Ritter. I didn't talk to him because he is a neighbor and competitor of mine and I don't talk with him. I do not remember Louis Ritter coming to my place and my giving Louis Ritter a check for $100. I had no trouble with the union in 1926. In 1928 my place was picketed, but not 1926. I do not remember a general strike in the early part of 1927.

I truck my poultry in by machine and I know that poultry that comes in on the trucks is inspected. The poultry that I truck in on my trucks is inspected. I will show you the slip. As soon as I come in, I call up Dr. Ives, he shall send me a man. I can show you the slips of inspectors come in and give me O. K. I don't remember the names of the inspectors. I brought in a lot of poultry from Philadelphia. One inspector that inspected my poultry that I brought in by truck is Dr. Weinstein. It is not a fact that I told Mr. Forsmith that the reason why I was bringing in poultry by truck is due to the fact that I did not care to have it inspected by a Government inspector. I had some kind of quarrel with Mr. Forsmith and I had a quarrel with Mr. Ritter. Phillips is one man in the poultry business with whom I am on friendly terms; this man Phillips is a brother of Phillips & Nizer, lawyers, who brought a lawsuit for Taits in Brooklyn.

[fol. 585] Mr. Forsmith did not tell me that he would not join the Poultry Board of Trade if I were a member because I had committed perjury over in the Community Poultry Trust case in Brooklyn; he didn't tell that to me in Libby's Hotel. I did not see Mr. Rice in Libby's Hotel.

Mr. Oseas: I will stipulate that Mr. Rice was there.

I was not there at all. They sent me telegrams and postal cards and I didn't want to go and I didn't go. I don't know that Mr. Phillips collected any money.

Cross-examination:

I had someone working for me in 1927 and 1928. He is working now, too, the same man. He is not a union man. The first name is Tony. The last name I don't know. Tony left my place in March, 1928. No one told me I should have union men. They called a strike in my place for two days. Then I discharged Tony. He was working for me a little but not entirely. He used to go with me to Philadelphia to get chickens two days a week. They put Morris Weiss to stay in the place and smoke cigarettes and read the paper. I paid him; otherwise they would be picketing the place yet. While Morris Weiss was working for me I went to Washington Market. The union loaders cut the tires--not loaded the trucks. I came around the first time and they cut the tires. This was in April, 1928. After the time when they cut my tires, I did not go back to Washington Market. Up to March, 1928, I was buying my poultry in West Washington Market and all over, and I got whatever I wanted up to March of 1928. Even though I got a lot of complaints between August, 1927, and March, 1928, I got whatever I wanted, but under what conditions! They used to steal poultry off me. Tootsie's gang did the stealing. I did not [fol. 586] see Tootsie or his gang or anyone else do the stealing. When I sit in the front, driving my machine, I could't see who was robbing me in the back. This happened in New Jersey; positively, they are all over. Here is his brother (identifying Emanuel Herbert). I didn't see him steal but I said he was there. Any time when I came over on the railroad I met him. I met Julius Rosenstein, too, when I drove the machine. I couldn't see in the back. Emanuel is a foreman for the trucking company in New Jersey and he works on the railroad. I didn't see him run after my truck. I looked in the front; I didn't look on the back who did the stealing. No one was on the truck with me. My truck was robbed on the way to New York from New Jersey a lot of times. Although my truck was robbed a lot of times, I never had anybody with me. I was interested in finding out who did the robbing, but what could I do? I was robbed of sometimes fifty pounds, sometimes

seventy-five pounds, sometimes a hundred pounds, worth twenty-six to thirty dollars. I knew every time I went to New Jersey I was losing anywhere from fifteen to thirty dollars' worth of chickens. I never paid for a man to go with me. A man would cost five to six dollars a day.

The New Jersey Live Poultry Trucking Company does not send two men with each truck from the railroad yards to the ferry. The New York Live Poultry Company may be responsible for every dollar of loss or theft on their own trucks until after the truck gets onto the ferry, but not for losses and thefts on other trucks. Nobody from the trucking company went with my truck from the railroad to the ferry. I do not know whether the railroads employ detectives in their yards to protect the property that is loaded from the cars to the trucks. All that I know is, that between August and March, that every time I went to New Jersey to bring back a load of poultry, my trucks were robbed of anywhere from 50 to 100 pounds of chickens. I didn't go [fol. 587] often to Jersey. I used to go to the market. They robbed me that week, so for four to five weeks I didn't go there. I bought my stuff in the market. I knew it was Tootsie and his gang because since they start me the trouble from August, 1927, the trouble begins.

I was over in the Erie Railroad. They threw manure in the face, throw dead chickens in the face, throw eggs in the face. That happened in the first part of March, 1928. When they came around and told me to get a price, this and this price, and I refuse them, then the troubles began. That was in August, until March. The first thing that happened, they sold the poultry out; that was in September. Then they stole poultry between August and March. They broke my machine a few times. I told you they stole the chickens and broke the machine, and throw me dirt in the face. It was Mannie Herbert, Julius Rosenstein and Arkie, the good fellow Arkie. I will tell you some other things about Arkie. Arkie told me some days I will find my head in the ash can and my body in the sewer.

When I went to the New York Central Railroad and I saw Nigger Goldman, he told me, he says, "Don't load for him because he is on the blacklist." He pulled a paper out from his pocket—here is something more you ain't heard—the blacklist. He went around and says, "Don't load him, don't load him, don't load him, don't sell him, don't load him, he is on the blacklist." I know him for the last maybe

fifteen or eighteen years, maybe more. He was a stopper, he is the one on the railroad, and Max Kessler is the second on the market. Those two stopped me from buying poultry. I only know those people that was over to my place. There was Tootsie and his brothers Charlie and Harry; there was Joe Wiener, and there was Rosenstein. That is what I saw when they all came together to tell me to take the price up.

[fol. 588] Q. Is that the one that you say you saw, Joe Wiener?

A. Joe Wiener, yes.

Q. He was in your place when?

A. On August of 1927.

Mr. Kaufman: May we have the record show that the man whom the witness identified at this time is the defendant Dave Kaufman.

Q. Who told you that man's name was Joe Wiener?

A. Well, I heard in the market his name Joe Wiener before he even started to give me trouble.

I saw these men that came into my place at that time, in the market lots of times. I knew their names at that time. They did not belong with the market. I saw them around the market. When they came into my place at that time they told me what to charge for poultry. They took a towel and wiped out the price sign on the window. They told me they will send around a woman, one woman, to know and find out—two women, the inspector, if I get that price. Then they came around again and they got hold of me by the coat and they says, "Now, listen, you did not get the price; you are a liar. You told us but you lied. I will come over and kill you right outside." I was afraid. I did not go to the police station and say five men by the name of Tootsie Herbert and Charley Herbert and Mannie Herbert and Joe Wiener and Rosenstein were in my place and they threatened to kill me. I didn't do anything about it. They came back in March, 1928, and they picketed the place. Between August of 1927 and March, 1928, they did not come to my place.

By Mr. Hallheimer:

I remember saying that I always wanted to sell my poultry as cheaply as possible and that I was satisfied to make

$50 a week. After I bought my poultry in the market, I add about one cent for shrinkage; then I added on the cost [fols. 589 & 590] of slaughtering the poultry. I did not add on the electric light. I did not add any other charges. I told you what I added on; that is all.

By Mr. Sager:

During the time I was in business I never had four men handle my fowl. I only got one man.

(Defendant Wiener stands up.)

This Wiener was the man that was with them when my place was picketed. It was this Wiener. He was standing on the corner telling people, "Don't go in the place, this place is on strike." At that time I had a shochet in my place. Kalman Shapiro of the shochets' union came around and told me, "The shochet will not work for you." He said, "One union man in and keep the price I am telling you." I was to keep this union man in, that was this union shochet. I never spoke to this Joe Wiener. I did not know that he was the delegate of the shochets' union.

There was no time, between the summer of 1927 and the summer of 1928, when I failed to pay any of my bills to any commission man. I don't owe a button to anybody.

[fol. 591] Barney Hecht testified at this trial as follows:

Direct examination.

By Mr. Rice:

I am a retail marketman in Williamsburg. I attempted to purchase poultry at the New York Central terminals in June or July of 1931. I went to buy poultry from the Acme Commission House on the New York Central in Manhattan, and he sold me 11 coops of poultry. I hired one of the New York Live Poultry trucks; they should load it up on them. They had to load up 11 coops of poultry and we brought it over on the West Washington Market, and we came down in the market, the machine came down the market. I saw

Tootsie Herbert and Charley Herbert and Harry Shomer, they had some talking between them and they called over the driver and they says "Listen driver, that stuff can't be delivered to Barney Hecht's, he can't buy no poultry in New York.". He says "give me the ticket where you bought the poultry." I said "You can't have the ticket because I put my signature on the ticket." I went to the office where the Acme Poultry Company is and I said: "My dear friend, this Tootsie, that bunch of gangsters, that bunch of racketeers says I can't get no poultry in New York. Here is the ticket with my signature. You can have the poultry, I can't get no poultry in New York," and I went home.

I went directly to the railroad car to buy the poultry. All the commission men are willing to sell it. They had 40 cars on the track and every commission man was willing to sell me all the poultry, because they know my credit is good. I had cash with me and they did not want the cash. Nothing was said at the time that I loaded the 11 coops on the truck of the New York Live Poultry Trucking Com-
[fol. 592] pany.

Q. Is that the trucking company that hauls all the poultry?

A. Yes. Nobody dassn't go in and load poultry except in their machines of the New York Live Poultry Trucking Company trucks. If I hire trucks anywhere else, they won't load them, because all their trucks have to deliver the stuff and nobody else's.

Mr. Kroppy: I move to strike out his answer on the ground that he testified to a lot of conclusions.

The Court: Denied.

Mr. Kroppy: Exception.

After I had bought the poultry, I asked the commission men to load it on to the trucks of the New York Live Poultry Trucking Company, the same trucking company that gets all the poultry at the New York Central Terminal and delivers it to West Washington Market. They deliver it both to the railroad terminals and to the West Washington Street Market—the marketmen's market. After the poultry was loaded on the truck, I rode on the truck to West Washington Market. I saw the truck driver talk to Arthur

Herbert, Charles Shomer and Charles Herbert. I did not hear what they said. After I saw them talking, the driver came over to me and said, "Barney, give me your ticket." I said, "I can't give you the ticket. It has my signature on it." He was referring to the ticket the Acme Commission Company gave me at the railroad terminal, I put my name there and I said, "I am going to the office and give them the ticket back." He said Tootsie Herbert and Charlie Herbert they said you can't get no poultry in New York City. I asked him "why" and he said, "You know why. You ain't buying for a long time; they won't load you no more poultry. You can't get poultry in New York." I went back to the Acme Commission House and gave them the ticket back. I said, "My signature don't call for me to give you any money because I did not get the poultry." He said, "All right, we wouldn't ask you for any money." I talked at the Acme Commission House to Dave Gordon, [fol. 593] just he himself. I went home without the poultry. Then I went to Philadelphia to get poultry. I went on the same day, at 12 o'clock at night. I got some farmers there that I know that give me poultry. A few refused to sell me any poultry. I went to Philadelphia and I got the poultry. I bought it from a few people, some farmers that I knew. I bought at that time 2,000 pounds of poultry. I got the poultry home. No one talked to me on the way home, and I sold that poultry all right. Back in June or July, 1930, I went also to Philadelphia for the purpose of buying some poultry. Before I went to Philadelphia on that occasion, I went to the railroad terminals in New York for the purpose of buying poultry. Everybody wanted to sell me, but they said there is no use selling you because Tootsie said he would not load. At that time I went to the West Washington Market and I attempted to buy poultry from the various commission men; I went to pretty near every commission house. Samuel Werner, James Norris, Fleck, and Sol Frankel. I went to all of them. I cannot remember all of them. They say we will sell you but what are you going to do; Tootsie won't let you load. I saw Arthur Herbert, Charlie Herbert and Shomer in West Washington Market. I also saw Max Keslin. I don't know whether he belongs to Local 167, I don't know anything about it. I did see him with Charles Herbert and Arthur Herbert all the time. I don't know the name of Arthur Herbert's

union, and I could not tell you whether Max Keslin belongs to the same union that Arthur Herbert does. I saw Max Keslin when I went around to these markets, to the commission houses to buy poultry, he told them "He is on the blacklist." He followed me down every place. He said we can't load him any poultry. I have not seen Max Keslin do anything else in West Washington Market. I have seen him a lot of times in West Washington Market just going around. If anyone was on the blacklist, he was looking, he had a paper.

[fol. 594] Mr. Kaufman: I object to that and move to strike it out.

The Court: Denied.

Mr. Kaufman: Exception.

The Court: I will wait till he gets through. Let him tell his story and then you can move to strike it out if you want to.

The Witness: I could get poultry, so I seen him going around with a paper. Anybody that was on the blacklist did not get it, he went around and said: "This man is on the blacklist."

Mr. Kroppy: I object to that; he said he went around with a piece of paper, he was not there.

The Court: Over-ruled; it has not appeared yet.

Mr. Kroppy: Exception.

Q. Did you see Max Keslin do what you stated?

A. Yes, a lot of times.

The Witness: I couldn't say how many times. I saw him when they started up with the Chamber of Commerce. As soon as that started up, the Chamber of Commerce, he was on the job. He was working before on the stand to lift up coops but as soon after the Chamber of Commerce started, Tootsie got a job with them and they took him away from the work and he did the work, Tootsie stopping up the poultry. I was on the blacklist; he came around and says Tootsie told him that Barney Hecht is on the blacklist, he can't get no poultry, all right, he couldn't get no poultry. He followed me around to every commission man. He told them "Don't sell him." I saw him follow others. I saw

some other marketman who is on the blacklist before I was. I couldn't remember who it is. It was before the time I was on the blacklist. On those occasions I saw Max Keslin talk with Arthur Herbert, and I heard Herbert say to Keslin "He can't get no poultry." I did not hear Keslin talk with anyone else in the Union. I don't know anything about it. [fol. 595] I didn't go to West Washington Market in June or July, 1930, at all. I have been talking about 1931, between June and July.

I bought my poultry in 1930 in Philadelphia, every week. Before I went to Philadelphia, I bought my poultry in New York. We went on the market, on the Central, on the Erie Railroad, on the Delaware Railroad, on the Pennsylvania Road. I am talking about 1928 when we used to buy in New York, but not 1930. 1930 I was buying poultry in Philadelphia, and nowhere else. I started to go to Philadelphia in March, 1929. Before March, 1929, I bought in New York, and was able to buy poultry all over. In March, 1929, I was refused at the New York Central. I went in a yard where the New York Central is, so one of the foremen of the New York Live Poultry Trucking Company, called "Nigger" came out with a list and he says "You can't get no poultry around New York, because you are on the blacklist. He says: "Go over and see Mr. Simon. Talk to Mr. Simon." I went over to Benjamin Simon, supervisor of the Chamber of Commerce. This was in March, 1929. He came in and called me in a private office. He says "What do you want?" I says: "I want to get poultry." Mr. Simon says: "You can't get any poultry unless you join the Chamber of Commerce and you got to pay us $50 a week. If you don't, the union will put you four men in the place, if you need it or you don't need it." I told Mr. Simon "If you ain't going to make it any better I am going to put you in jail the same about the time you were in the Attorney General's office. Now, you will have to go again in the jail." Mr. Simon says "I am working for a bunch of thieves, the marketmen is a bunch of thieves." Then he says "He got the gangsters, those bunch of gangsters; I got to do whatever they say. If I don't do it, I am no good." He said the gangsters were Tootsie Herbert, Charley Herbert and Joe Wiener. He told me, "I am afraid from them, you understand, I would like to see if you could get poultry——" I says, "Mr. Simon, I ain't

[fol. 596] got a pound of poultry in the place; what am I going to do?" He says to me, "Go over tomorrow morning on the New York Central and tell him I said he should give you poultry." I says "Never mind, you better see Tootsie before." He says, "I can't see him. You know Tootsie. They are all a bunch of bums. They are laying around the cabaret houses, the speakeasies, I can't find them." But, he says to me "I am going to try to get them and you go over tomorrow morning on the New York Central and get poultry."

I went over the next day on the New York Central, the same fellow, the foreman from the New York Live Poultry told me "Don't go in the yard; you can't go in, you are on the blacklist." I don't know anything about it. I went over to the Chamber of Commerce and I was waiting for Simon. They told me Simon wouldn't be in all day, and that was Wednesday and I needed poultry badly for the Thursday business. All of a sudden I went over to Newark to try to get poultry. I went over to Newark and they told me "You must be on the blacklist and we are afraid for the New York gangsters." In Newark, I talked with Newman, a commission man, and I met a few and they told me "at no prices," they were afraid to start up with the New York gangsters. So I went back. That was about four o'clock. Simon was at West Washington Market. I says "Well, Mr. Simon, what do you say?" He says "Tootsie is here. I am going to have a talk with him." He went in with Tootsie and they had talk for about a half hour. I saw them talk inside a restaurant. I went in there and said "Well, what do you say, Mr. Simon, can I get poultry?" He says "I don't know." He says "I will talk to Tootsie." I says "All right." He says "Tootsie says you got to pay for four men. How many corners has a crate?" So I says "Four." He says "You must have four men in the place." I says "What am I going to do with four men? I only sell a little poultry."

Q. How many men could you afford to employ in your place?

[fol. 597] Mr. Kaufman: I object to that.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: I can't even afford one man. I only got a plucker. When I see I can't do anything with him I went over to see David Hirshon; he is the president of the Chamber of Commerce and I met him at Hawk's stand. I said, "Mr. Hirshon, why can't I get poultry?" Mr. Hirshon said, "Why don't you join the association?" I said "I will never join it." He said "Why?" I said "I wouldn't join; I wouldn't pay any money." What I am testifying to now I testified at the criminal case.

Q. Well, that testimony is going to be read so we won't go over that.

Mr. Kaufman: The only difference is, Mr. Rice, he said this happened March, 1929. His testimony in the criminal proceedings indicates it happened in March 1928. It is perfectly clear, there is no question about that.

By Mr. Rice:

Q. Mr. Hecht, what year did this happen? Now be careful.

The Court: What are you talking about? There are so many thises. What year did you talk to Benjamin Simon up at his offices?

A. I am sure, well I am not sure, I think it is 1929, that is what I think.

Q. Are you sure it was not 1928

A. No, I don't think so; I think 1929.

Mr. Kaufman: On page 267 he testified that he saw Benjamin Simon twice, once in September of 1927 when he was a witness against the Community Live Poultry, once in September 1927, and the second time in March, 1928, and he told precisely the same story with some variations from the story he told here.

The Witness: That is so long, I couldn't remember. I testified at the criminal trial in October 1929. I think it was five or six months before the Jewish holidays.

Mr. Rice: If your Honor please, I myself am not straight whether this happened in 1928 or 1929.

Mr. Kaufman: The record is perfectly clear.

Mr. Rice: I don't think the record is clear.

Mr. Perlman: If your Honor please, it is very important to know whether it is 1928 or 1929. We contend that up till 1928 it is apparent that some conspiracy has taken place [fol. 598] because the Court has so held anyway. We say it was abandoned some time in 1928. Now, whether it happened in 1929 it is very important evidence.

Mr. Kaufman: Again, on page 269 he talks about 1927 and March of 1928. He talks about it several times on that page.

Mr. Rice: I concede that he does.

Mr. Kaufman: Then again, on page 272, he talks about March of 1928. Again on page 272 he says it was between August, 1927, and March, 1928.

Mr. Perlman: Here is his testimony; here is the stenographic record.

Mr. Kaufman: On page 268 he testifies it was between 1927 and 1928.

Mr. Rice: I can't make this witness say it was 1928 if he does not wish so to do.

Mr. Perlman: It is perfectly all right; we will read his testimony.

Mr. Rice: Very well; that will be read with the testimony that has been given. May I state this, that in the criminal case, the Government adopted the theory that it was not permitted to prove overt acts after September, 1928, and therefore no effort was made to prove any overt acts after September, 1928.

The Witness: I would say I saw Benjamin Simon at his office in March before the criminal case. Whether it was March of the same year or of the previous year I couldn't tell you. I think about 7 or 8 months it was before the criminal trial. What year the criminal trial was I don't remember. I think it was in 1929; that is what I think.

Q. Did you have any way of computing or any way of finding out how many months it was before the criminal trial?

A. About seven or eight months, I think.

Q. Now, do you have any way of finding out whether it was seven or eight months after?

A. I couldn't tell you.

Q. How do you estimate it is seven or eight months?

Mr. Kaufman: I object to that; he is asking for the operation of the witness's mind. It is incompetent.

The Court: Overruled.

Mr. Kaufman: Exception.

Q. How do you figure it was seven or eight months before the criminal trial?

A. I met him in March; that was the second time. Then the criminal court I think started up in September, didn't it?

[fol. 599] Q. After the foreman of the New York Live Poultry Company talked to you at the New York Central terminal, where did you buy your poultry?

A. I couldn't get no poultry; I went down, I told you, I went down to Newark. I couldn't get it then; I couldn't get no poultry.

By the Court: Down where?

A. I had to go and get poultry by some marketman in Williamsburg. I met his son and I said "Can I get some poultry tomorrow?" He says "I know you are on the blacklist but if you will give me three cents a pound profit I will sell you poultry. You come around Friday morning at four o'clock and we will get you the poultry."

Q. Did you continue to buy poultry in town?

A. Yes, sir.

Q. How long?

A. I was going to buy it.

Q. How long did you continue to buy poultry in town, in New York City?

A. When?

Q. In March?

A. That is the time they stopped me up so I couldn't get any more poultry.

Q. Then what did you do after March of either 1928 or 1929?

Mr. Kaufman: He said 1927 or 1928.

The Witness: I couldn't remember the time.

Mr. Kaufman: I object to his statement.

The Court: Overruled.

Mr. Kaufman: Exception. Counsel, if your Honor please, has improperly quoted the testimony of this witness.

Mr. Rice: He immediately thereafter said 1927 and 1928.

The Witness: After March of 1928 or 1929, whichever it was, I went to Philadelphia. I went over to a couple of places, I couldn't tell you the names. So they refused to sell me. Reiser & Rabinowitz sold me a little poultry. Levit said he would sell me poultry on the quiet but nobody should know it. Then they refused to sell me, they said they were afraid. So I had to buy from the farmers. I hired Levit, the trucking company in Philadelphia to truck it to my place. When we came over, Harry Shomer came over to the place and he says to the driver "If you are going to bring over poultry from Philadelphia over here, we will throw you in the river." This was in March of 1928 or 1929. I went over again to get another load of poultry and the trucking company refused to take it over. No-
[fol. 600] body wants to take the stuff over. I had to go back home and get my own machine and take my stuff home. Then I was afraid to take my truck again, so I hired from Brooklyn a truck and Harry Shomer came over again to my place, and before I had my poultry in, he said to the driver "If you are going to take stuff over to this man, I am going to put you in the river." "This man is on the blacklist." So this trucking company refused to take the stuff over again—so I had to go with my own machine and bring the stuff over. I did haul the poultry home, and sold it. Tootsie sent over a couple of men with signs and they went to the door and they said "Your place is on strike" and then for every customer that passed through they told him "This place is on strike." Tootsie Herbert and Charley Herbert and the other bunch were standing on the whole four corners, maybe about 20 and they told the customers, "Don't go in this place, it is on strike." It was on a Saturday and Monday morning they came out again, these fellows with signs by the door "This place on strike." I put a sign out "This is not a strike-out. This is a bunch of gangsters. This is a bunch of racketeers that want me I should pay 15¢ a pound for poultry that the poultry only costs about 28¢ and we should sell it for 37¢ and I refused to pay the price. That is the reason they go on strike." Prior to that time, it cost me 28¢ and I charged 33¢. I never charged more than that. The other marketmen were charging at that time in my district 45¢ and 48¢ a pound. The market quotation was at that time, I think—I couldn't tell you exactly—I didn't buy in New York. I

bought in Philadelphia. I figure—I couldn't tell you exactly—I think the price was about 28¢.

After the criminal trial which took place in October or November, 1929, I did not buy poultry in New York; I tried all over but they wouldn't load me. I went to every commission man in New York and they are all willing to sell me poultry but Tootsie says "You can't get no poultry in New York." They are willing to sell me, but Tootsie—the man refused to load me. I went to West Washington Market and to the New York Central. That is all. This was about two weeks after the criminal trial. Then I went over to Philadelphia to get poultry. I took my own truck and loaded it myself. I bought from Reiser & Rabinowitz; sometime I buy off Levit; sometimes off the Eagle Com-
[fol. 601] pany, sometime off Pober; they sold me poultry. I hauled it home and sold it. On the way home there was a cop; he used to work for the New York Live Poultry Company and they called him "Red".

By the Court:

Q. "Red"?

A. Yes, he has red hair. He is a cop on a motorcycle. He stopped me sometime and he said to me "Say, listen, I am supposed to give you all the trouble what you want." I said "Why?"

Mr. Kaufman: I object to the conversation between a police officer and this witness.

The Court: Over-ruled.

Mr. Kaufman: Exception.

The Court: I can't tell whether it will be connected up. If it is not, I will disregard it.

The Witness: This was in 1930, about 7 or 8 months after criminal trial was over. The policeman told me that Aaron Weisler, Tootsie Herbert and Charlie Herbert promised a certain amount of money that he will give if he is going to give me trouble on the road. Now he says, "Go home and tell everybody that you paid $25 for speeding." I said "All right." I went home and I says to every market man I see, "I paid $25 for speeding." Every week I had to say the same thing. He met me every week on the roadway in New Jersey, and I said, "I paid $25 again; I paid $25 again." That is what I had to tell. He said

Charlie Herbert and Tootsie Herbert promised him a certain amount of money for giving me trouble. He said, "Go home and tell to everybody that you paid $25 fine for speeding." So he would be able to get some money from them. I was not speeding. This was a motorcycle cop on the highway in Rahway. When he stopped me the first time he said "What is the matter, are you in trouble?" I said, "I am." He said, "Can't you get enough poultry in New York?" So I said, "Tootsie Herbert don't let me alone in New York." He knows all about it, because they would stop by him and tell him what to do, to give me all the trouble they could on the road.

The Court: I am not taking this as evidence of what happened between him and the policeman—I am not taking this as a fact or evidence that it happened unless it is otherwise connected. It is merely within the decision of the [fol. 602] Court of Appeals as explanatory of something. I will say to you, Mr. Rice, that up to this time it looks to me as if it is utterly incompetent. You have not connected it in any way.

The Witness: I had not seen him talk to Arthur Herbert before that. I don't know whether he belonged to his union or not. At the time he worked for the New York Trucking Company, I remember that he had a button on his hat.

I bought poultry in Philadelphia during the year 1930 every week, all year around, and I always hauled the poultry home. No one else talked to me on the highway in 1930. I had trouble in 1931. On April 3rd I went over with a load of poultry from Philadelphia and when I got to New Brunswick, I was stopped by the Society for Prevention of Cruelty to Animals. One fellow had a market in Perth Amboy, New Jersey, and he stopped me. Two men stopped me. They says, "Three crates of poultry is overcrowded." They were representatives of the Society for the Prevention of Cruelty to Animals.

Mr. Kaufman: I object to that as incompetent, not binding on any of these defendants, unless it is shown that these two agents of the Society for the Prevention of Cruelty to Animals were in some wise connected with the defendant.

The Court: Overruled.

Mr. Kaufman: Exception.

The Court: I will admit it subject to connection, either circumstantially or directly, I cannot tell yet. Some things cannot be connected directly but may be connected by certain circumstantial evidence. I will give it no effect unless it is connected up.

The Witness: One of the fellows says, "Say, you are Barney Hecht, ain't you?" I said, "Yes, sir." So he said, "You are the man we are looking for." I says, "All right." They says, "Pull over to the side. Turn around to the gasoline station." I turned around and he says, "Three crates overcrowded." They says, "We are looking for you," and they pulled me to the gasoline station, and one of them he says "$27.50 fine." He says, "Be sure and take another crate and loosen up those chickens." I did loosen them up. In New Brunswick those two men followed me down. I came to the highway and those two men blowed a whistle again, "Pull over to the side, some [fol. 603] more crates overcrowded." They took me to another gasoline station—that was in New Brunswick, and he says, "$37.50." Then they told me, "If you ever go through the same road, we will take your truck and your chickens and everything. Be careful." So I asked him, "Where is your beat?" He said, "All over Jersey. You can't go over Jersey, because we will take everything away from you." Which I got a receipt and I gave you the receipt.

I am buying poultry today in Philadelphia from farmers —from Rabinowitz sometimes—all around, wherever I can get them. I know Max Solomon, he is the commission merchant in Newark. His company is the North Jersey Poultry Company, Inc. I got their bills here. In September, 1931, he called me up on the telephone several times and he says, "Why do you have to go to Philadelphia and drive all night to get your poultry? You will be able to get poultry from every commission merchant in Newark." So I went over and I said, "I will tell you I can buy poultry by you, but I won't go with my own machine." I went over there and bought poultry from Max Solomon. I followed their truck down along with my touring car. I didn't see nobody. So I told him I am going to take poultry for two weeks but he should deliver to me with his own machine. After two weeks I am taking my own machine. He says he is willing to sell me poultry, that is all. Then the second

week I went over to call for poultry and he said he is afraid for the New York gangsters, and he refused to give me poultry. I bought from Roth Brothers and Holman Company and the North Jersey Live Poultry Company in Newark. Solomon said, the second week, he was afraid of the New York gangsters. He was afraid of Tootsie. He mentioned besides Tootsie Herbert, Charlie Herbert. He said, "The whole bunch I am afraid from them." He told me he would not sell me any more poultry.

I buy all my poultry now in Philadelphia. It costs me about 4 cents a pound more to bring it from Philadelphia.

Mr. Rice: I will read into the record a copy of the receipt which the witness Hecht obtained:

Stephen Walker, Magistrate, Middlesex County, New Jersey

[fol. 604] "April 3, 1931.

Received of Barney Hecht the sum of $37.50 on account of charges having been made against him by George McRea, agent for the S. P. C. A. of Middlesex County, New Jersey.

Stephen Walker, Esq., Magistrate, Middlesex County, New Jersey."

Cross-examination.

By Mr. Perlman:

The Witness: The time that I said men were walking in front of my place with the sign on them "This place is on strike" was in April, 1928 ~~or~~ 1929, I could not tell you exactly, it was only once. That is the same time that I put the signs out in my window that I did not want to sell at 50 cents a pound, and was selling at 33 cents a pound, and buying the poultry at Philadelphia for 28 cents a pound. That was five or six months before I had my talk with Red, the Rahway police officer, about a year or a year and two months after the criminal trial. The trial was in October and November, 1929. That occurrence with the police officer was sometime in October or November, 1930. I am sure about that.

Q. What was the last trouble, if any, that you had with any union, when was that?

A. Trouble?

Q. Yes, any trouble with any union, when was the last time you had any trouble with any union?

A. I didn't have no trouble at all to tell the truth.

Q. You had a strike, didn't you?

A. Yes, I had a strike.

Q. That is the last time?

A. Yes.

Q. And since the strike you have had no trouble with either Local 167, which is the chauffeurs' union, or the schochetim union, isn't that true?

A. I am signed with the chauffeurs' union.

The Witness: Since the strike, which took place in 1928 or 1929 I had trouble with both the schochetim union and the chauffeurs' union. I will say it was about three or four months after the strike. I am sure about that. I did not have any trouble again after that three or four months' period. I did not have any trouble with Local 167, the chuaffeurs' union after that strike. They cut me up the machine, that is all I know. That was in July, about three or four months after the strike. Since that time, I had another trouble. That was about five or six months later. After the strike. Except for the trouble that I had [fol. 605] up to about five months after the strike I have no trouble since that time with any union. I don't want to change that statement.

Q. When was the last time that you talked with any of the Herberts?

A. I talked with them about last year. That was in January.

Q. January of 1930?

A. They called me over to the office.

The Court: Listen to the question. He is just trying to get the date. He was not asking what he said; he just wants the date.

The Witness: January 1931.

Q. That is this year?

A. Yes.

The Witness: I talked to Charlie Herbert. He called me over to the union office. I talked to him about my shochet. The shochet was there and the secretary was there. At that time I had a union shochet. They did not ask the

union shochet to leave my place. I still have the same union shochet. I only have one shochet. He is working for me five or six years. He left when the strike was. After the strike, he came back and since he came back after the strike he has been working for me right along, and he never left me since that time in 1928 or 1929. I testified in the criminal trial, but whether or not I testified about the same strike in the criminal trial, I don't remember,—maybe I testified about the strike in the criminal trial. Whether the strike took place before the criminal trial I don't remember. I had one strike; that is all.

Q. Do you remember being asked this question and making this answer:

"Q. What month was that?

A. That was in April.

Q. What year?

A. 1928. I went over to Newark and bought a little poultry and he came that Harry Shomer and there came a couple of fellows and he told me 'If you are going to get poultry, we are going to kill you.' I said, 'Then I will be dead and won't have to die twice.' That is all I said. That was Easter when they sold poultry for 45 and 50 cents and after I sold my poultry for 35. See what they did to me."

Do you remember saying that?

A. No, I don't remember that.

Q. Here you said you were selling poultry for 35 cents?

A. I don't remember that.

Q. Today you testified that you were selling it for 33.

A. I don't remember; it is so long ago. I could not remember.

Q. Your recollection was better in 1929 when you testi-
[fol. 606] fied than it is today, was it not?

A. Maybe. It is so long. I cannot remember. I know simply he came around one Saturday with a gang and they put two fellows and put signs in front and back, in front of my door and says "This place is on strike."

Q. What month was that?

A. That was April.

Q. The same year?

A. Yes, sir.

Q. Do you remember that?
A. I remember that.
Q. Wasn't the strike then around March or April, 1928?
A. I could not remember whether it was 1928.
Q. You heard what I read?
A. All right, it was in 1928.
Q. The strike was in 1928, was it not?
A. Yes.
Q. That is correct now, is it not?
A. Yes.
Q. So that the next trouble you had with any union was three months after the strike in 1928, isn't that right?
A. Yes.
Q. That is correct?
A. Yes.
Q. And the next trouble you had was about five months after the strike?
A. I don't remember for sure, but I say about that.

The Witness: That strike was in March or April, 1928, when the union schochet left me. He came back the same day that I settled up with the union. After I settled up with the union, they gave me one union schochet. I only asked for one. I got one. I have had one union schochet ever since that time. Charles Herbert is the delegate of the schochetim union. That schochet did not refuse to kill any chickens for me since he returned to me in March, 1928, at the time of the strike. He killed, but didn't come on time. At the time of the strike I did not get union loaders. I had no agreement with Local 167 which had the loaders in its membership. I did not refuse to take union loaders. They did not ask about loaders. He was a plucker, not a loader. The loaders are those who put the coops of chickens on the trucks. I did not employ at the time of the strike in March or April, 1928, any loaders who were members of the union. I only got one plucker, that is all I got. When I go with my truck to the market to get poultry, I have to have the poultry loaded on my truck. Since March, 1928, at any time when I tried to load poultry, I did not employ any union loaders. This plucker that worked for me is [fol. 607] Tony De Steffano. He has worked for me about

six years. He does not drive my truck. I drive it myself. He works in my market. He is plucking chickens. He does not go to the market with me when I buy. When I went to the New York Central at 60th Street to get poultry, I did not take my plucker with me. When I got to the market and took out the poultry that I wanted the poultry would be in crates. I would have the crates put on my truck. I did not have at that time any union loader. I did not have any loader. At the New York Central Terminal, I do not know whether they are union loaders or not. I don't know anything about it. They would not load for me They were also there in the West Washington market. They never tell me that they would not load for me because I would not employ a union loader. I had a loader named Weiss, the loaders' union put him in. He did not go to to the market with me. I did not discharge him . At the time this man Weiss worked for me I did not have De Steffano working for me. I had discharged him. He did not belong to the union. After I discharged him the union sent me Weiss. He worked a couple of weeks and then he went away himself. After Weiss was either discharged or left me, I took back De Steffano. He did not join the union. After I took him back, these loaders of the market would not load for me. I am not now ready to employ a union loader. I am selling 2,000 pounds of poultry; I cannot afford to have a union loader. De Steffano who was working for me in 1929 is still working for me. He is not now a member of the union. He is getting $32 a week. A union loader gets $75 with overtime. I do not know the name of any loader who refused to work for me. I don't know anything about him. They didn't give me a chance. Since the strike of 1928 I never talked to any loader either in West Washington Market or the New York Central market. No loader since March, 1928, or 1929 ever told me that he would refuse to load for me. I did not talk to no loaders. I met a man named Nigger in the New York Central Railroad. That was the same year, I don't remember whether it was 1928 or 1929. It was in March, before the strike. At the time of the strike I saw Benny Simon. I saw Simon and Tootsie in the restaurant before the strike. The only times I went to Newark to get poultry were once before the strike and once two weeks after the strike, and now, once in 1931. The second time I bought it and loaded it up,

[fol. 608] Connolly was there, that was the time I went before the strike. From the time of the strike until recently this year I did not go to Newark to try to buy poultry. From the time of the strike until today I have bought and sold poultry every week right here in New York City, and I have gotten whatever price I thought was fair and reasonable. I paid whatever price the marketmen asked me to pay. All this time I have bought poultry in Philadelphia from commission men and farmers. That is the regular way of doing business, and that is what I have been doing regularly every week since the strike in 1928.

Further cross-examination.

By Mr. Kaufman:

The Witness: I buy the poultry from the farmers in Philadelphia in the market. Farmers come to the market with a load of poultry. Anybody can buy from them. I took this union man Weiss to work after the strike. At that time I had a talk with Arthur Herbert I never told Arthur Herbert that I would make a union man of Tony DeSteffano and pay the costs of making a union man of him.

Further cross-examination.

By Mr. Perlman:

The Witness: I told Max Solomon that I would buy poultry from him in September of this year if he would deliver the poultry to my store. I could not get loaders to load for me now in New York. They will load for me if Tootsie will let them. I don't need no union men. When I sent to Philadelphia to get my chickens the loaders over there loaded for me. I don't know that they are not members of the New York union. No one refused to load for me there.

Redirect examination.

By Mr. Rice:

The Witness: Throughout the year 1930 and 1931, up to the present time, I have been buying poultry in Philadelphia. It cost me 4 cents more per pound to buy there. I have tried to buy poultry in New York in July and August

of 1930. Went to every commission man in New York and they told me "You can't get no poultry because Tootsie won't let you load."

Mr. Kaufman: I object to this, if your Honor please; this is all repetition, why go into that. I object to it on the ground also that counsel is impeaching his own witness. The witness testified that he did not go to the Washington Market in 1930 on his cross-examination.

[fol. 609] Mr. Rice: If your Honor please, I understood he said that he did go.

The Court: He has been very vague about it.

Mr. Rice: My understanding is that he testified in the criminal trial that he was unable to buy from any commission men in the Washington Market or railroad terminals.

The Court: I have the dates so confused from the testimony of this witness that it is difficult to tell just what he did testify.

Mr. Rice: My recollection is it was six or seven months after the trial.

The Court: I think he testified both ways.

The Witness: I am sure this was after the criminal trial, about two weeks, I think. I tried later on again in New York to buy poultry; that was about six months later. I will say about April or May, 1931, I went over there to try to get poultry and I could not get it. In 1930 I just went over to look around; I asked if I could get poultry and they said "No chance to get any poultry." The commission merchants told me "You have no chance because Tootsie won't let you load even if you have got 50 men in your place." It is not the practice on the part of market men to take loaders with them to commission markets. I have never seen a market man take his loader with him. The wholesale man that sells a lot of poultry sends his driver to buy poultry and load it but the retail men, the same as I, they got to always go over there with the machine and the poultry is loaded by the laboring men or helpers working for the commission men, at West Washington Market, and the railroad terminals.

I did not discharge Weiss when he was working for me. He left me. He said "Tootsie told me to go back." I did not see Arthur Herbert talk to him. When Weiss left my place he didn't do nothing at all. He says the few weeks he was standing in the place he come around at half past

seven in the morning, smoked cigarettes; at half past eleven he went to dinner. He came back at half past one and stayed to four and he says "All I have to do is to take your money." I did the work in my place while he was there. I paid Weiss. I agreed to pay him $45 a week. Tootsie brought him in. When the strikers took him away they said "Go ahead, let him work," but he [fol. 610] did not want to do anything. About three months after the strike I came over to West Washington market and tried to buy poultry in my own machine, and they cut up the four tires from the truck. If I would see who did that I could tell you, but I don't know his name. I went to the market again to buy some poultry; I bought a few crates of ducks and chickens and I tied it up with a rope a hundred feet long, and one fellow cut the rope in pieces and he stole a coop of ducks from my truck and I didn't see the fellow until two weeks ago, I saw him sitting over here on this bench. I saw him in this courtroom two weeks ago. I don't know his name. I did see him go around there; the other fellow said, "Go ahead," and when I started to move the machine, he stole a coop of ducks from my truck. That was a week later, I went to the Erie Railroad for poultry and there was Tootsie Herbert and Arkey and Tootsie's brother, Mannie Herbert. He order to put two machines in the back of my machine, and two machines in front; then they started to throw dead chickens in my face, stones, nails, dirt in the face, and they smacked me up the machine on the Erie Railroad. That was a couple of weeks later, August, I think. I cannot fix the year. This was after the strike. That is the trouble that I testified to in 1930 and 1931.

Mr. Rice: But you are certain you had trouble six months after the criminal trial?

A. No.

Mr. Perlman: He didn't say that, after the criminal trial.

Mr. Rice: Yes.

Mr. Perlman: He just said after the strike.

Mr. Rice: Yes, but I am referring to another incident.

Mr. Perlman: I object to it as being too indefinite.

The Court: The witness did testify at one stage; he has testified at two or three different ways.

Q. Are you sure you had trouble six or seven months after the criminal trial?

A. Yes, sir.

Q. And was that in 1930?

A. I couldn't tell you; I couldn't tell you what year.

Q. But you are sure it was six or seven months after the criminal trial?

A. Yes, sir.

The Witness: I went to Newark and bought poultry before the criminal trial. John Conlin came up. I bought ten crates of poultry off of Newman, the commission man. [fol. 611] When he loaded five on my truck, Conlin came up and said "If you are going to take that stuff home, I am going to throw you in the river. You remember, and besides that, I am going to kill you right at once." He got hold of my coat, he got hold me like this (indicating) and he wanted to kill me. I ran into the office and Newman said to me "Please do me a favor, there is going to be some trouble, take your stuff off." In January, 1931, I talked with Charles Herbert. There was my rabbi, as there was a bunch of shochats there. I could not tell you whether the Secretary was there or not. I think it was the man that was over here just now. He handed me the paper. That is the one (indicating Joseph Rosenman). He said to me "You will be able to get poultry in New York from this time on. Don't go to Newark or Philadelphia. Sign your paper and you will be able to get poultry in New York." I mean the contract with the Shochtim Union. So, I did sign and the next day I went over for poultry. Charley Herbert says "What, poultry?" He says, "Can't do it." He said "You can't get no poultry." I did not have any other conversation with Joe Rosenman. I don't know the name of this police officer that I testified stopped me on the highway. They call him "Red." That is all they call him; I know him for a long time. He used to bring me stuff in the place.

Recross-examination.

By Mr. Kaufman:

The Witness: The trouble I had about six months after the trial was with the officer on the road, that is the only trouble I had in 1930. The officer along the road told me

that Tootsie and some other people were going to give him some money for making trouble for me. He told me to tell the people in my neighborhood that I had to pay a $25 fine. I told the Court before that I did tell everybody I paid a $25 fine. I was lying every time I told this to them. I had to do it. I met this officer on the road maybe half a dozen times, who knows. After every time that I saw this officer on the road and went back to my neighborhood, I didn't say nothing to my friends; they asked me "Did you pay $25 again?" I said "Yes, I did." I had to lie to them every time. This officer never made any trouble for me. That was the only trouble that I had in 1930. The only trouble I had in 1931 was when the officers of the Society for the [fol. 612] Prevention of Cruelty to Animals arrested me and took me before a Justice of the Peace, and he fined me. I said nothing at all to the Justice of the Peace. The officer made a complaint against me. I pleaded guilty, and was fined twice. I had to plead guilty because they told me if not I would have to get $500 and bring a bailor and this way I had the money and so I paid it right there. This way I had the money, $27, and I paid it right away. If I plead not guilty I had to bring a bailor and the stuff was before the holidays; I needed the poultry so I had to go and do it. I figured it was cheaper than it was to stand trial. That was with this trouble. I bought poultry in Newark and they refused to give me the poultry in September 1931. In 1930 I had no trouble except "Red" the motorcycle cop, they told me a story. In 1930 I was getting all of the poultry needed. There is no question about that. When I testified before that in 1930 I went to West Washington Market, some time in July or August, I bought poultry.

Q. Let us keep to one year at a time, Mr. Hecht, because I want to understand you. Now, in 1930, did you ever buy poultry in West Washington Market?

A. No, sir.

Q. You testified on examination by the Attorney General that you went there some time during July or August, and you looked around the works; is that correct?

A. I couldn't remember it. What is was I couldn't remember. I tried to buy poultry and I couldn't get it; I tried everywhere.

Q. Let us see what you are talking about. We will take one year at a time, Mr. Hecht. You will take one year at a

time, we will take the year 1930, right now, that is the year before this year?

A. Yes, sir.

Q. Did you get it then?

A. Yes, sir.

Q. I am asking you, can you tell us when, when you went to West Washington Market in 1930, and tried to buy poultry—did you have any trouble? Did you ever go?

A. I did go five or six times during June or July; I don't remember whether I went there between January and June and between the end of July and the end of December, 1930.

Recross-examination.

By Mr. Kaufman (continued):

The Witness: I know a commission man by the name of Kassoff. I never talked to him. I did not tell Kassoff that I was buying in Philadelphia because I could buy cheaper and get a better selection of poultry. I did not see him in the market in July or August, 1930. I saw him before. [fol. 613] During those months I went over to Sam Weiner, a commission man to buy poultry twice and talked to a salesman; I could not remember his name. I also went to Norris's place and talked to the salesman or the bookkeeper; I don't know his name. I went over to Fleck and talked to the salesman; I don't know his name. I went to Norris's place during the months of July and August, about three or four times and the same to Fleck's place. He is next door, he used to be next door. I talked to one salesman at each place. On these trips I also went to Charley Weiner and talked to a salesman; I don't know salesmen's name at all. I never pay any attention to them. I wasn't interested in finding out who was the man who told me I couldn't get poultry. I also went to Sol Frankel four or five times and talked to the salesman. I went to others but I don't remember the names of all of them. I went by the Castle Poultry Company and talked to the salesman; he is dead now. During the months of July and August when I talked to the men as I testified, I was getting poultry in Philadelphia, and after these five or six trips that I made during those months, I didn't go back to West Washington market. I don't remember at all whether I went back to West Washington Market during the balance of the year 1930, after July or August. I got as much poultry as I

needed at Philadelphia. I got good poultry but it cost me three or four cents a pound dearer. I went to the West Washington Market in 1931 to get my poultry. I was there quite a few times. The first time in 1931 that I went to West Washington Market was in January, when I settled with the Union, and the Union sent over that I should sign an agreement for a shochet. Went over and they told me I should be able to get poultry in New York as soon as I signed the agreement with them. The next day I went over to buy poultry and they told me they won't load any poultry. Max Keslin the stopper told me that. He went around and said "No poultry for him," he followed me down every commission house and he said "No poultry." I saw Charley Herbert and Tootsie Herbert was there with him and he told them to follow me, and they followed me down to every commission house and told me "You can never get poultry."

I recall that I signed a contract with the Shochtim Union. [fol. 614] I went to West Washington Market after I signed the contract. I don't remember how many days after it was. This contract which is dated January 5, 1930, is the one I signed with the Shochtim Union.

The Court: Let the contract be marked as identification as Exhibit B for identification; then we will know what we are talking about. What is the date of it?

Mr. Kaufman: January 5, 1930.

Mr. Rice: I object on the ground that there is no evidence in this case up to now that shows in what way a contract between Mr. Hecht and the Shochtim Union would have any relevancy on the issue.

The Court: Over-ruled; admitted.

(Defendant's Exhibit B, heretofore marked for Identification, received in evidence.)

By the Court: Wasn't the contract in January 1930 instead of in January, 1931, as you testified, Yes or No.

A. I think it was only last year in January. That is what I think. They didn't give me a chance to see it. Whether it is the 30th or 25th I didn't read nothing at all. They said "Sign and you get poultry in New York." They didn't give me a chance to get poultry at all.

Mr. Kaufman: I move to strike out the statement of the witness.

The Court: Denied.

Mr. Kaufman: Exception.

Q. You don't know now whether it was in 1930 or 1931?

A. I know it was last year, 1931. That is what I know now.

Q. Now, will you explain the date on this paper, Defendant's Exhibit B as being January 5, 1930 (handing paper to witness)?

A. Well, what do you want now?

Q. Can you explain the date on this contract, Defendant's Exhibit B?

A. I don't know; I don't remember it at all.

The Witness: As to whether it was 1930 or 1931 I couldn't remember that. I know I signed it. They didn't give me a copy; no I just signed it; that is all. I think I signed in 1930 and I think it is 1931; I think there are two contracts. I don't know whether it is 1930 or 1931. I couldn't tell you. I went to the man to get poultry after I signed and I couldn't get no poultry. If the contract says 1930, then [fol. 615] 1930 must be the year.

In 1931 I went to West Washington Market about four or five times during the entire year. I know we are living in 1931 at the present time. I couldn't get any poultry. In January I went to West Washington Market. I told you about a few of those and Max Keslin followed me down. I went to Sam Weiner, Morris Fleck, Hawk, Charley Weiner and Sol Frankel. It is only ten months ago since I called on all of the commission men whose names I have just mentioned, and I cannot tell the name of a single person who I talked to at that time. I went to the market again in July or August of 1931. I have got a pretty good memory. I went over on the New York Central, and there was about 40 cars of poultry. I talked to every commission man, the salesmen that were over there. I talked to Hegeman's salesman Gordon. He is a partner too, and he sold me some poultry. I came over there on the railroad and he said to me "I got a very nice carload of poultry." And I said "All right," and he said "Will you buy a load off of me?" and I said "As much as I need." So I bought 11 coops of poultry off him. They wouldn't let me take it home. They loaded it up on the New York Live Poultry Trucking Company truck and they brought it over in West

Washington Market. I want the Judge to believe that Gordon works for Hegeman and that he sold me eleven coops of poultry, in the New York Central yards sometime during July or August of this year. I think it was this year, I am not sure. I tell you between June or July or August; I couldn't tell you exactly. I am not sure whether it was between July or August or June. It may have been June, July or August. I went down with the truck to West Washington Market. There was a driver, I couldn't remember his name. He is a lame fellow. The truck stopped near Sam Goldstein's place. It did not go over to Hegeman's place. There was more stuff on it besides my 11 coops. It was not taken off the truck when I got to West Washington Market. After the truck got into the market I saw Tootsie Herbert, Max Keslin and Harry Shomer. They called over the driver and they had a talk with him and then my driver turned over to me and he said "Barney Hecht, give me your ticket; you can't get the poultry." I said "Why?" He said "Tootsie says you can't get the [fol. 616] poultry in New York." I said "I wouldn't give you the ticket but I am going up to Hegeman and can't give you the ticket." I put my name there. I went up with the driver to Hegeman's and he saw the same man who sold the poultry, Gordon. The drivers says "Barney Hecht can't get no poultry in New York and you know it well." "You got to take the stuff off." I said "Here is your ticket." I said "Here is my signature, don't ask me for any money for it because I don't take the poultry." He says to the driver "Bring the poultry and I will load it right here on the stand." They took the 11 coops off the truck and put it on Hegeman's place. I told Gordon "Take the ticket." That is all. The two talks I had were, one up at the New York Central Yard when I bought the poultry, and the second talk was at West Washington Market when I complained to Gordon that the driver wouldn't let me have the poultry. I didn't go any more.

Redirect examination.

By Mr. Rice:

The Witness: I signed more than one contract with the Shochtim Union. I think I might have signed one in 1930 and one in 1931. I don't know when I signed the first one.

I remember signing one this year and one last year. I am sure I signed one in 1931.

Recross-examination.

By Mr. Kaufman:

The Witness: I said I signed one contract last year and one this year. I don't know anything about the contract marked in evidence Defendant's Exhibit B, dated January 5, 1930 which is for two years, and does not expire until December of 1932. That doesn't help me to remember that I am making a mistake about the testimony that I gave just a moment ago.

Cross-examination.

By Mr. Perlman:

The Witness: I signed a few contracts.

Mr. Perlman: See if this is the one you signed in 1929; do you remember that one?

A. They didn't give me no chance to look at it.

Q. Did you sign it?

A. This is my signature.

Q. In January of 1929?

A. Maybe.

Q. And the next one you signed was January, 1930, wasn't it?

A. Maybe.

Q. The year after that?

A. Maybe.

Redirect examination.

By Mr. Rice:

[fol. 617] Q. Did you sign a third contract in 1931?

A. Yes, sir.

By Mr. Kroppy: If your Honor please, I would like the record to show my motion to strike out the testimony on all the grounds previously urged.

The Court: Motion denied.

Mr. Kroppy: Exception.

Mr. Perlman: May I ask to strike out that part of the testimony about the motorcycle policeman in *the* Rahway New Jersey.

The Court: Denied; I will give it no respect unless it is connected up.

Mr. Perlman: I make the same motion with respect to the testimony dealing with the charges made against him in New Jersey for violating the Public Health Law.

The Court: Same ruling with the same explanation.

[fol. 618] MAX LEVIT, called as a witness on behalf of the Government, first being duly sworn, testified as follows:

The following testimony of this witness, given at trial in October, 1929, was read in evidence pursuant to same stipulation as in case of other witnesses.

Direct examination:

I am in the hauling business. My place of business is at Philadelphia. I have been doing business there for the last two years. I never met the defendant Arthur Herbert. I do not know who Arthur Herbert is, and I never had a conversation with him. I am sure of that. I did haul poultry for Schechtor Bros.; that was back in 1927; that was around the holidays, if I remember right. I do know someone by the name of Tootsie Herbert. (Arthur Herbert arose.) I believe I met the gentleman. On this occasion he just said in reference to certain live poultry to New York. This happened around September or October, 1927. He just said, if I remember right, he was the delegate of the union and that we were not doing any too good in helping their cause in handling this poultry to New York, and asked me wouldn't it be possible to try and not handle this poultry to New York.

When I had this conversation I don't remember if I was at the railroad or at the market, I don't remember exactly. It was in Philadelphia.

There was somebody with him at that time. I do not remember who it was. He asked me in a nice way to do what I can to help their union along by not handling the poultry. That was the first conversation I had with him. Outside of saying about the handling of that live poultry over to New York that it would be a hindrance to their union, there

wasn't much more that he said. I think he did say that anybody that would come from New York to buy poultry at that time would not have any connection with the union. That is [fol. 619] all that I remember. I did not ship any poultry to New York after that, for a while. I never had any other conversation with Herbert after that, none whatever. I did ship poultry to Harnett. This was quite a while after this conversation. I don't remember whether that was in the winter of 1927 or early part of 1928, I don't remember for sure.

Cross-examination.

By Mr. Sager:

My business is hauling business. I am simply employed to haul poultry. Just before I went on the witness stand nobody pointed out any of these defendants to me and identified them. In this conversation I had, the question of credit was not discussed that I know. I had nothing to do with credits. I brought over such chickens as were entrusted to me from time to time without any hindrance.

By Mr. Kaufman:

I am in the Hauling business myself. I have my own employees. I don't know that I called them union but I know we paid well for our laborers. Herbert did not try to get me to employ union labor. Herbert never told me that some people who were buying live poultry were not using union labor in New York. We never went into that. It was not my business to know that. He just asked me to cooperate with respect to certain people in New York. I testified before that he told me that he wanted me to help out his union. He did tell me that the union was having trouble with some people in New York, and he wanted me and my company to cooperate with his union, and that was the extent of his talk with me; he saw me once. He wanted me to cooperate with him so that he could keep the union rules in force. He said I would be a hindrance if I didn't help to cooperate.

By Mr. Oseas:

I was to do this to help the unions in New York. As I said before, by my stopping handling that poultry to New York would help the union out. And that's all. The last question

Mr. Sager asked me was whether I brought the poultry to [fol. 620] New York without any hindrance, to which I answered yes. That is, I had no interference with any shipment of poultry to New York, outside of that of Harnett. I did say I did have some hindrance. This Harnett occurrence we had interference. We handled some of the poultry on the load going to New York at that time; we were both going to New York. We had three-quarters of a load on the truck and Harnett had come to Philadelphia and bought the poultry and took it back on his own truck. Harnett took some on his own truck and we were going to New York anyhow. That is the only time, in fact. This shipment of poultry that went to New York, some of it came back to Philadelphia. I don't remember saying anything then to Schector, but my understanding was not to handle poultry that might harm the union in any way.

As to the time I had the conversation with an unknown party over the telephone, I cannot say now whose voice that was.

This Harnett poultry, I have just referred to that, I brought over to New York without any interference, I delivered part of it and I brought part of it back to Philadelphia without any interference. I do not know about anything happening to that poultry, about the delivery of it. It came back."

Mr. Kroppy: I move to strike out his testimony on the grounds previously urged by me.

The Court: Denied.

Mr. Kroppy: Exception.

The following examination took place at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I have been hauling poultry from Philadelphia to New York in 1928, 1929, 1930 and 1931. I have not had any difficulty or interference in connection with the delivery of poultry, during the last three or four years.

Redirect examination.

By Mr. Rice:

The Witness: A poultry marketman by the name of Jauvitis did not ask me to haul poultry for him in 1930 that I

know of. I don't know if he was a partner of Aaron Steinberg, but I know I was to haul poultry. I did haul poultry [fol. 621] in 1930 without anybody's interference. I don't recall that Jauvitis came to my place and asked me to haul a truck-load of poultry to New York. I testified at the probation hearings in this building in May 1930. I remember that a few weeks before that, Jauvitis was unable to obtain a load of poultry from Philadelphia; I remember that load now. There was a load of poultry we were to handle over here. The only trouble was it never got here, on account of the money. The merchandise that was bought was not paid for. I have to do with the money, because it is on my responsibility. I had nothing to do with the sale of the poultry, but much of the merchandise we are entrusted with. I act as an agent of the commission man in Philadelphia. I have done it many a time. I am sure that I didn't tell Jauvitis or Steinberg on that occasion that I could not deliver any poultry to New York.

[fol. 622] BENJAMIN ROSENFELD, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a retailer of slaughtered kosher poultry in the Lower East Side. I do not employ any members of Local 167, or of the Schochtim Union. My wife helps me. I have a woman that plucks once in awhile; I have a man that watches the people that go out to see that they don't take anything with them without paying. I opened the store at 231 Rivington Street in 1929. Before that I occupied the market at 80 Jefferson Street. I occupied this market all of the time from 1925 to 1929, excepting for two or three weeks when Louis Weidberg occupied it; then he went back to his place, after they fixed it. He had a fire in his place and I let him go into my place in August, 1928, and he paid $250 for a month's rent; then he went in again and paid another month's rent. When he went there, I could not do business in that market. Louis Weidberg occupied my market a second time in the latter part of

1928. After he had occupied my market the second time, I found a little book with black covers. I could not recognize it by looking at Exhibit 21, but if I could see the original book I could tell what it is. I gave it to you. It did have writing inside—names and numbers. It had one name and then a figure opposite it. I found it on a shelf in the office; it must have been lying there quite sometime; I did not know what it was for. In December, 1928, I went up to you; and in January 17th, 1929, I saw the poultry men were indicted, so the next day I just happened to remind myself of that book. So I got that book; I could not tell exactly what it was all about and who it belonged to and I went to you and gave it up to you.

I recall when the Chamber of Commerce commenced operations in 1927. At that time my place at 80 Jefferson Street was closed. I opened my place after that time. I went up to 204 East Broadway and asked for a schochet. As far as I know, it was the Schochtim Union. I saw Mr. Kalman Shapiro and Joseph Rosenman, a schochet. Kal- [fol. 623] man Shapiro was president and Rosenman was of the Schochtim Union. That was the last part of July, 1927 or July 15th.

I had a conversation with Joe Rosenman at that time. I told him I wanted a schochet from the place. He says to me, "Go up to Benjamin Simon and if he says we could give you a schochet we will give you one." Simon was called the supervisor of the Chamber of Commerce. Rosenman said I would have to promise that I would do no wholesale business. I did not tell him whether I wanted to do a wholesale business or not. I told him I wanted a schochet. After I talked with Joe Rosenman on this first occasion, I went up to Benjamin Simon. I told him my name. I told him where I opened my place and that I wanted to get a schochet; I told him that I was at 204 East Broadway and Mr. Shapiro and Mr. Joseph Rosenman sent me down there to ask for a schochet. He told me he says he could get me a schochet and he would get me one providing I won't do a wholesale business. He said, "Will you promise not to do wholesale?" I said, "I could not promise you anything." Then he said, "You have to take in four men if you want to do wholesale." I answered Mr. Simon, "I only have got a little store for my poultry and if someone

comes in for a coop of chickens I can't refuse, but I don't mean to do a wholesale business." "Sometimes I may be stuck for poultry," I explained, so he said "You go back and we will see what we can do for you." He said, "Go back to the Schochtim Union." I went over there. I talked to Kalman Shapiro and Joseph Rosenman. I said, "Benjamin Simon sent me here and he told me to promise not to do any wholesale;" Mr. Kalman Shapiro and Mr. Joseph Rosenman both were talking at the same time; one was talking louder than the other, and they said that I should not do wholesale business. Joe Rosenman said "You cannot get a schochet." He got hold of me and pushed me out of the office. He did not say anything else at that time. Kalman Shapiro said that if I promised not to do wholesale, at the same time Joe Rosenman said, then they will get me a schochet.

I went up again to Benjamin Simon. I told him if I did not get a schochet, somebody is going to jail, because I didn't see any reason why I should not be able to do business. He said "I will see Tootsie about that. Maybe he will give you a schochet." I saw Joe Rosenman after that [fol. 624] on the street. He stopped me and he says "Well, if you promise not to do wholesale, we will give you a schochet." I said, "I am not going to promise anything and I am going to get a non-union schochet." He said, "If you get a non-union schochet, you will be a head shorter." I saw Benjamin Simon again after I had seen Joe Rosenman on the street, up at 429 West 14th Street. He told me to wait—tomorrow, tomorrow; he kept on putting it off.

I spoke to David Hirshon about this in November, 1927. I also spoke to Charles Herbert in August, 1927. He saw a schochet in my place. So he said, "What is this non-union schochet doing here?" So I said, "You won't give me a schochet, so I got another schochet." There was 23 coops of poultry there and he said at that time, "Get that man out of here," and he tried to fight. I tried to separate him. He shouted "Get that man out of here." "I will get you a union schochet." So I said, "I put him to work and I have to pay him." So he said, "Never mind, I will give you another schochet." So he said he would send a schochet right away and he went to Charles Mirotznik a marketman across the street from my place. One of his schochtim went to my place and then he said, "Don't

say that I left you without a schochet." I had not invited Herbert there, and I was not expecting him. I had employed that non-union schochet about two days after I had those conversations with Simon, Shapiro and with Rosenman; then Charlie Herbert came in. Before there was any conversation, he physically took hold of the schochet and told him to get out. He moved back and I parted him and while I was doing that, he said "You take this schochet out. He is a non-union schochet." He did not strike the schochet.

[fol. 625] By Mr. Rice:

The Witness: After Charles Herbert had taken hold of the non-union schochet, I pulled him away, but he said, "You take that schochet out of your place. He is a non-union schochet." So I told him I was after a schochet for several times, and I wanted to get a union schochet, but they would not give me a union schochet. I was with Benjamin Simon. I was over at the office of the Schochtim Union and they would not give me any schochet. So I got this schochet. So he said if I will take this man out of here he would get me a schochet, so I said, "I got to pay him." So he says to me, "That is all right about pay, we will take care of that," and he said he will give me another schochet. I told him if he will get me another schochet, then I will send him away. After Charles Herbert went away, he stayed long enough for the other schochet that he got from Charles Mirotznik's place to come over. He sent a schochet from Charles Mirotznik's place to come over. I suppose he was a union schochet. He worked for Charles Mirotznik. He worked temporarily until he gets me another schochet to my place. That was in August, 1927. I had a conversation with Charles Mirotznik a short time after the visit of Charles Herbert, when I got another schochet. He came over to my place. He says that if I was going to do any wholesale I was going to be a dead man; and I had better behave myself and don't do any wholesale business. So I told him "Get out of my place." Charles Mirotznik did not say anything about my taking a union schochet. I didn't discuss that with him. I just talked with Charles Herbert about that. Mirotznik did not say anything about taking my schochet away from me if I did a wholesale business or anything of that sort at

all. He said, I wouldn't be able to get any stuff. The second time he came he went in the back room, the killer room, and he was looking around. He says "You got any butchers here?" I said if anybody would come in, I would sell him. Selling to butchers is a wholesale business. Charles Mirotznik said to me "If you do any wholesale business you will be a dead man." He said that the second [fol. 626] time, the first time he didn't speak of any stuff. On the second occasion when Charles Herbert came to my place, he told me "You got any butchers here?" And he went in the back and looked. He said if I was going to sell any butchers, I couldn't get any poultry. I said if anybody comes in my place, I am going to sell him. He did not say anything about taking my schochet out if I sold to butchers. No one else said anything about that.

I talked to Louis Weidberg in West Washington Market. He is a slaughter house man on the Lower East Side. He said that I shouldn't do any wholesale, and if I did, I wouldn't be able to get any poultry. This was a few days after I talked to Mirotznik when I went for poultry in West Washington Market. I told him "I don't do any wholesale anyway, but anyone who comes in, I can't refuse him." My specialty is not in doing wholesale, but if somebody comes in, I can't refuse him. Sometimes when I stock in a coop of poultry or I hear the market has to go down, I want to get rid of the poultry; I want to call somebody in. Mirotznik said whatever Charley Herbert says, you got to do. Mirotznik is a marketman on the East Side. I do not remember having any conversation with Benjamin Simon after I got the schochet.

Two or three weeks after that I had a talk with Simon about something that happened at my place of business. I had a schochet named Jacob Goldwasser. I told Simon that shortly before that a butcher had come into my place who wanted three chickens killed, and that Goldwasser refused to kill the chickens for that butcher. I told Simon that I asked Goldwasser why he would not kill for the butcher and he said he was afraid of Charlie Herbert. That was true what I told Simon. I said to Simon "If I have to promise, I must promise you, that is all." Just before that he said, "You ain't got four men and you can't do wholesale, because you ain't got four men. If you do wholesale you won't get no schochet." Charles Herbert never came

and talked to Jacob Goldwasser. I did not see any union delegate ever come to talk to Jacob Goldwasser. I never heard anyone tell Jacob Goldwasser that if he killed poultry for wholesale customers that he would be taken out of the market. I heard Harry Poppil talk to Goldwasser. He is a brother-in-law of Louis Weidberg.

[fol. 627] Q. What did Harry Poppil say to Jacob Goldwasser that you heard?

Mr. Perlman: I object to that as incompetent. Poppil is not a defendant in this case and no charge is brought against him as a conspirator in this case.

The Court: Overruled.

Mr. Perlman: Exception.

The Witness: He said "Louis Weidberg sent me over here to see if you are slaughtering for any butchers." He said, "I am your friend, but I am getting paid for it." He went over with a spotted horse and wagon every morning. Every day I was going out with a wagon he followed me out of the store. Harry Poppil did not have any other business at my market. That was in the early fall of 1927. I saw Harry Poppil talk to my schochet Goldwasser, but I didn't hear what he said. I do not know of any business that Harry Poppil had with the schochet. In the fall of 1927 I had a retail store on Rivington Street, and a slaughterhouse at 80 Jefferson Street. I had the slaughtering done at the slaughterhouse and it was brought over to the store. The slaughterhouse was at 80 Jefferson and 532 Water Street. It had two entrances. I saw Harry Poppil on Water Street, and at the store afterwards. He followed me from the market to the store nearly every morning when I had a schochet. He did not talk to me when he followed me. He said the first time he came there that Louis Weidberg sent him. He just said to me if I do any slaughtering for any butchers, I will be in trouble. He counted the coops and one time he said "I see you have 30 coops. What do you need so many coops for?" So I said, "I think the market is going to go up and I am speculating with more poultry." He did not say anything about butchers at the time he counted the coops. Goldwasser did not kill poultry for everyone that came in. One time a butcher came in with three chickens that he refused to kill. He said: "I would not kill any for the butcher because I am afraid of Charlie Herbert."

When I went up to the Schochtim office and talked to Joe Rosenman and Kalman Shapiro I said "I want a [fol. 628] schochet." That is all I told them. First Shapiro, and then Joseph Rosenman said, "Go up to Benjamin Simon, and if he should say we should give you a schochet, we will give you one, but you must promise not to do wholesale." My place was closed at the time. I opened up there afterwards. I did not say anything about the price that I was to pay for this schochet. They did not ask whether I wanted a retail or wholesale schochet. They just told me to go up by Benjamin Simon and if he said to give me a schochet, they would give me one, but I must promise not to do wholesale. Nothing was said at the Schochtim Union about whether I was to employ a $45 a week or a $65 a week schochet.

I don't remember if I ever received any letters or other communications from Benjamin Simon. I believe I received a letter I should come up to his office in 1928, in the spring. I went to his office after I received that letter, and talked with him. Charley Herbert was there. There was a big crowd there—Louis Weidberg, Harry Nerenberg, son of Hyman, Charles Mirotznik, Samuel Sahn, and David Hirshon. They were going back and forth in the office. I don't remember talking to Samuel Sahn or Charles Mirotznik. On that occasion Simon asked what I wanted and I said I was closed and I wanted to do business; I wanted to get poultry. He said, "I will see you tomorrow, tomorrow;" he says "Well, if I want to sell I had better go in and see Charley Herbert." He said "Take four men."

In 1927, about November, Benjamin Simon said to me when I came to his office, "I want you to join the Chamber of Commerce." And I says "I am hardly making a living, I just sell a few coops of chickens." He says, "If you want to join you will be able to get any poultry you want." He said "If you don't join the Chamber of Commerce you won't be able to get any poultry." I did join it, and signed a paper. Mis- Levine, a secretary in the Chamber of Commerce gave me the paper. Simon was there alongside of me when I signed. He said "Never mind reading it" and he pulled it away from me. I read that document about a few weeks afterwards. I saw Miss Levine there and I said "Can I read that thing that I signed the other day?" I says "I don't think it will be fair, I want to read what I

signed." She hesitated, so she gave it to me to read. I found my signature there, and I went back in the lavatory and tore it. Then I went right down and I went out. I bought live poultry in the fall of 1927 but not in the spring [fol. 629] of 1928. I tried to buy in the early part of 1928 in West Washington Market from Samuel Fleck & Co., commission houses, L. J. Schwab & Sons, Frank Hellman & Son, George Brown (he is dead now), and Castle Poultry Company. They sold me poultry all the time in the spring of 1928, but I couldn't get it delivered. On several occasions I bought a few coops and afterwards I couldn't get it. The Live Poultry Trucking Company wouldn't receive it. They were unable to load it on the truck, their own men; they wanted the people on the stand to load it and the people on the stand wouldn't load it. That situation continued from the last part of 1927 until the last week or the first week in January, 1928. I have not tried to get poultry in West Washington Market since the criminal trial. I have not been refused poultry since the criminal trial. I have never been asked by Joe Rosenman or Kalman Shapiro for a schochet since the criminal trial. When I was refused poultry in West Washington Market early in 1928, I bought poultry from Harry Wilson & Co., Cincinnati, Ohio. I did not keep a union shochat after I got poultry from Cincinnati. I don't remember what kind of a shochat I had, whether union or non-union. It was a shochat from Cincinnati. I have no market today. I have a slaughterhouse. I don't need a shochat. When I sent for poultry to Cincinnati, Ohio, that poultry was delivered to my market. There was interference with my poultry by Charley Mirotznik; next morning; not at the time it was received. He came over and he wanted to tear off a tag from the coops and I chased him away. He says, I wouldn't do no business. That is all. He is going to see I wouldn't be able to get any more on the outside. The next morning Harry Poppil came over to my place and said he was sent by Louis Weidberg and he has got to take care of his job and I shouldn't do any business. Sidney Rosenstein and Mor Rosenstein came to my store when I was sorting out the poultry; they went right in the back room. They followed me from the wagon; maybe I took the poultry to the store. They didn't say anything. When they went out there was a sergeant there, I told him "These fellows, see them there." I got

scared. "Look at those fellows here, what do they want here." So the Sergeant told them to beat it. They had no business there at any time at all. I had no union men in my retail store. They don't use a shochat in a retail [fol. 630] store. Harry Poppil said that Louis Weidberg sent him over to see that I shouldn't do any business, and I shouldn't sell butchers. That is everything he said. He said if I did sell to butchers that he would get me out of the way.

I know defendant Frankel. I talked with him in the office of the Chamber of Commerce in the early part of 1928 or the latter part of 1927. I said "Why can't I get no poultry." He said "You can't get any poultry here" and he hit me right over here (indicating), and he said "Get out of the place."

I know the defendant Dave Hirshon. I talked with him at the same time and same place. He raised his hand to me "You go out and get poultry, you worked for Baff and get poultry."

In March, 1928, I was buying slaughtered poultry for my retail store from the marketman on the East Side. I bought where I could get it. I was sold by Nerenberg, Finkelstein, and by Frankfater Brothers and by Plotkin & Zimmering. In the early part of 1928 I was told where to buy my poultry by Louis Weidberg. He told me the first killing in the morning I should go to Nerenberg. On the second kill I should go over to Frankfater Brothers, Hyman and Jacob. The first time I did it at the Nerenbergs and then I went over to Hymie Frankfater or to Charley Finkelstein. Nerenberg charged me above the market quotation five cents and Frankfater charged four cents. Some poultry is worth less. They charge today above the market quotation about 3¢ a pound, or less.

I know Louis Stalk. I had a conversation with him in 1927 or 1928 in West Washington Market. He said to me "You want to listen to Charley Herbert." "And you want to behave yourself." He said I should listen to Louis Weidberg. I saw him a number of times; he told me if I don't behave myself I would be a dead one. That was in the spring of 1928 at 429 West 14th Street, they were playing cards at that time.

On June 22nd or 23rd, 1929, I was employed by Louis Weidberg to charge the poultry. At that time there was

an organization in the East Side among the marketmen called L. W. Credit Association. L. W. is Louis Weidberg. As I understand it he was the head of it. The members of it were Charles Finkelstein, J. Wernick (he went in with [fol. 631] Charles Mirotznik who was a member), Jacob and Hyman Frankfater, Hyman and Isidore Haber, Abraham Wolf, Gramercy Live Poultry Company, Howard Live Poultry Market, Kosansky & Chasinsky, Morris Chasitz, and Pitt Street Live Poultry Market, composed of Samuel Isaacson, Isaac Lipshitz, Simon Lapoff, and a man by the name of Goldberg.

Q. Do you know what the function of the L. W. Credit Association was?

A. Yes.

Q. What was it?

A. That they allotted to marketmen to sell a certain amount of poultry. Now, suppose one market—

Mr. Kaufman: Now, I move to strike out this testimony; apparently it is unquestionably a conclusion of the witness. He said that people were allotted certain things.

The Court: Over-ruled.

Mr. Kaufman: Exception.

A. Each marketman was allotted to sell a certain amount of poultry. Louis Weidberg was the one that dictated it; a fellow by the name of Moe Cohen was an accountant, and Charley Shoenzeit.

Mr. Kaufman: I move to strike it out.

The Court: Over-ruled.

Mr. Kaufman: Exception.

Q. What did it do?

A. I want to finish this. A marketman was supposed to sell 20,000 pounds of poultry. Now, if he sold 5,000 more than 20,000, then he has got to give 4¢ a pound into the L. W. Credit Association and to give it to either Moe Cohen or Charley Schoenzeit.

The Witness: Louis Weidberg put in each market a charger, or watcher. They called them watcher that time. I was one of them hired by Louis Weidberg. I was paid $35 for that week. I was sent to the market of Charley Finkelstein and Schwartz on the East Side. Louis Weidberg told

me I should take the weights of the poultry in that market, when they put the poultry on the scale. I should take the number of pounds down, who buys it and after each day I should add up the number of pounds and bring up a copy of that to the office of the L. W. Credit Association and give it to Charley Schoenzeit or Moe Cohen. I wrote down the name of each one that purchased. I didn't keep track of customers that come in; sometimes the customers came in and did not buy. I didn't keep track of all of them. I did not do anything else in the market. There was one watcher for each market; I do not know whether they did the same [fol. 632] thing that I did. They told me they did at different markets. If a marketman was allotted a number of pounds to sell each week, if he sold above that much, that number of pounds he was supposed to turn in 4¢ a pound to the L. W. Credit Association. Benjamin Altman was, I think, assistant to Louis Weidberg; he was the whole fellow there. He went around to see if each one was all right and try to straighten it out. Maybe they kicked, they didn't sell enough poultry. I know at one time he came around to Charley Finkelstein's who was kicking; he wasn't selling enough poultry and he says "We will straighten you out." Of course, some of them didn't sell enough, they get money. Those who sold under their quota, were supposed to get 4¢ a pound up to their quota. Louis Weidberg told me that. Whether or not they received that amount, I don't know. Hyman Nerenberg was receiving money from the L. W. Credit Association—$100 a week—for keeping closed his market. That was after June, 1929.

I know David Kaufman the delegate from the union, and Harry Shomer. In the summer of 1929 he brought in two more men into Finkelstein's market, I don't know who they were. Finkelstein was a member of the L. W. Credit Association at that time. He went in the beginning and after that he was kicking that he did not sell enough poultry. He left the organization for a short time. It was at that time that David Kaufman and Harry Shomer came in with the two men. They said "Take the two men to work if you want to straighten out, we will take the two men out." When the two men were sent to Finkelstein's market I was in the Pitt Street Live Poultry Market, and I said to Isaac Lipshitz, "It is a shame to give him four men." I said he did not need it. So Lipshitz said if he

joins with us together we will take the men out. He did not say anything else.

Cross-examination.

By Mr. Kaufman:

The Witness: I was a witness in a case when Sam Weidberg assaulted me in 1929 in the Market of Louis Weidberg. Sam Weidberg is the son of Louis Weidberg. Up to that time I was Louis Weidberg's friend. I did not have a dispute with Sam Weidberg. He attacked me without warning. I went that same day to the Magistrate's Court and asked for a summons. So the Clerk asked for five dollars, otherwise he would not give me a summons. So the next [fol. 633] morning I said I would not give five dollars, so I went to Mr. Rice and he sent two men over there and I had five dollars with me which I had marked and it was lucky that the other men gave the summons. Sam Weidberg first spit in my hand and says, "You are going to put me behind the bars?" So without warning, he attacked me four times. He hit me in four places. One on the head, one over here (indicating), one here and one here, where I had a black eye. I was very angry then, so angry that I went to the Essex Market Place Court. I asked for a warrant and he said he could not give me one because I had no witness. Then I asked for a summons, and he said "Where is your witness?" And I said "I have no witness." I said I did not have a witness with me. I stated to the Judge that the Clerk in the Magistrate's Court wanted me to bribe him with $5 before giving me a summons. When the Clerk did not give me a summons I went over to Mr. Rice and he sent two officers to the court. I then got a summons and served it on Mr. Weidberg. There was a hearing before the Magistrate on September 20th, and Weidberg was discharged. After he was discharged I was still angry at Weidberg and at the Magistrate too. That Magistrate positively did not give me a square deal. I was also angry at Louis Weidberg because he was the cause that I could not have a slaughterhouse and not being able to get poultry or a shochet. I testified before that I gave up my slaughterhouse because I had to. I closed my slaughterhouse at 80 Jefferson Street the latter part of 1927. I kept it practically closed except on one or two oc-

casions when I took poultry in, so that they should not know where I was getting it from. I gave over the lease to William Simon. During the year 1928 I opened up that market as many times as I could get poultry. It was one or two times, maybe more. That is all in the whole year. I transferred the lease to William Simon in April, 1928, and William Simon opened up a market at 80 Jefferson Place. It was either assigned or subleased with the understanding that I was supposed to work for him. When I said I opened up the place once or twice in 1928 I meant once or twice between January, 1928, and the time I transferred the lease to William Simon. After I transferred the lease to him I worked for William Simon about a week and a half. He [fol. 634] closed the market.

The place was bombed on May 6, 1928. I was not there when the so-called bombing took place. I was there in the morning when the place was opened and there were fire engines there and the police were there and the lock was broken open, and it was reported there by the Bombing Squad of New York Police that the place was bombed. Because there were police there and there was an explosion I say the place was bombed. Whether some of these defendants had something to do with the bombing I could not say anything about that any more than you can. Then I took the place back. I had a contract with William Simon for a year, but it wasn't in writing. They fooled me too. They were going to make it in writing and they kept putting me off, tomorrow, tomorrow. I repaired some of the place after the accident that I referred to as a bombing. I did not reopen the place. I kept it closed the balance of the year 1928. I did not have any store until the last week of February 1929. I gave up my chicken store in Rivington Street in the spring of 1928, either in March, April or May.

Commencing in January of 1928 and ending when I closed the chicken store in May of 1928 on Rivington Street, on one or two occasions I got my poultry in Cincinnati. That was live poultry. I had it slaughtered by me at 80 Jefferson. Slaughtered poultry I bought from Hyman Niernberg, Frankfurter Brothers, Charlie Finkelstein, and I believe Plotkin & Zimmerman. There were four places that I bought from. First I had to go to Niernberg; Louis Weidberg told me I must go there first. He told me by Frankfater Brothers and Charlie Finkelstein. Nierenberg sold

me all the poultry I wanted. Frankfater did not. The other two people sold me all that I needed. Frankfurter refused to sell. I should go first to Niernberg and if Niernberg said he should give me he would give me. Niernberg sold me all the poultry I needed but it was not the right kind of poultry. Plotkin and Finkelstein sold me all the poultry I needed when they had it. When they did not have it, I went to Niernberg, when Niernberg wanted to give me trash and [fol. 635] charge me higher prices. He had better poultry, but he would tell me that it was sold. He said it is not for you. I am angry at Niernberg. He did not treat me right.

[fol. 636] Bernard Glasberg, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

[fol. 637] The following testimony of Bernard Glassberg, given at a former trial in October, 1929, was read in evidence by stipulation as in the case of previous witnesses:

Direct examination:

The Witness: I was in the live poultry business from February, 1928, until December, 1928, under the name Wolf & Glassberg, Inc. The owners of that business were Abraham Wolf and myself. Our firm was a member of the Chamber of Commerce. I did not attend any of its meetings but Mr. Wolf did. I asked him what was going on at the meetings. He told me things that went on in the West Washington Market, about prices and conditions. He said that we were going to get a new customer into our place, a fellow by the name of Nierenberg. He said that was one of the things decided at the meeting. Nierenberg came in after and wanted to buy poultry from us. He also said Nierenberg was going to come in and bring some of his customers to our place and buy poultry from us. We arranged to pay him $300 a week for that; we deducted it off Nierenberg's bill for about five or six months.

He did not tell me what was happening to Nierenberg's other customers. About five or six came to us. Our firm did not make any other payments during or before this period aside from the $300 a week. Those customers bought from us most of the time; sometimes they went away, didn't like the stuff. When I told that to my partner, he notified

Nierenberg he went to look where that customer brought the poultry, because we gave him credit. The customers always came back to us after Nierenberg was notified, unless there is a certain reason he didn't like the poultry. I mean, [fol. 638] sometimes they came back and sometimes they did not.

Cross-examination.

By Mr. Sager:

The Witness: I was in business with Abraham Wolf from about February, 1928, to December, 1928. We had a place of business on the East Side. We had a lease and were paying a big rental. When we went out of business, I left our books in the safe. We had a lot of unsettled accounts, bills that we owed. Mr. Wolf assumed this lease and the debts of the partnership, about $20,000, and I was released entirely.

Mr. Wolf told me about different meetings, and as a result of some of those meetings we bought somebody out, who turned over a certain number of customers to our concern and we paid him so much a week; that was the understanding. From time to time one or more of those customers might leave us for a day or two and see what they could do elsewhere. Some of them came back to us because they liked our poultry best. As to these meetings Mr. Wolf talked about, he didn't say there was any meeting of anybody or firm or corporation; he simply told me that in a meeting of the men around the market place these things were discussed.

By Mr. Oseas:

The Witness: Not all of them came back; I said a few came back the next day. We had better poultry. They came back because they owed us money. The poultry was good, too. They came back the next morning, and said, "This is good poultry, this is what I call good poultry."

Mr. Kroppy: Same motion.
The Court: Same ruling.
Mr. Kroppy: Exception.

[fol. 639] The following testimony was given by the witness on this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am a retail poultry dealer. I was out in 1927 until February 1928 when I went into business again until November 1928. I again resumed business the last week in May, 1930, and have since then been in business continuously to the present time.

Since May of 1929 I have not had difficulty in buying poultry, and I do not know anyone who has. When I went out of business in November 1928 it was by reason of private affairs with my partner.

By Mr. Rice:

The Witness: I was a partner of Abie Wolf on the East Side. I was a wholesale market man, and a member of the Chamber of Commerce in 1928.

I made contributions to Louis Weidberg and Charles Mirotznik who were collectors of the east side. We did not pay it; we took it off the bills from the merchandise, that is the way it was paid. How much a week I don't remember.

By Mr. Kaufman:

The Witness: In 1927 I was not in business. I had no trouble in 1928.

[fol. 640] HARRY FINKELSTEIN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Same stipulation was made with reference to this witness as to the other witnesses.

[fol. 641] The following testimony of Harry Finkelstein, given at a former trial in October, 1929, was read in evidence pursuant to stipulation as in case of other witnesses.

Direct examination:

The Witness: I am a butcher located in Coney Island, for eight years. During the summer of 1927 I bought poultry from Gerber & Klieger and also tried to buy from

Herman and Al Berman. I bought stuff by him two days. After the two days Klieger called me back to go to him and I went back. Sunday morning I bought of Berman and on Tuesday I went back to Klieger, and on Wednesday Herman Berman came to my store and asked me to come to him to buy and I must give him my hand, honest word, I will be in by Thursday morning in his store. On Thursday morning I came to Berman's place to get stuff. I asked Herman, "You can tell me the price?" He said, "I am very sorry, you cannot get by me a dollar a pound stuff, you belong to 8th Street, because you kill there, you cannot get by me for no money." I said, "I cannot go there; you took my honest word and you have the stuff ready." He said, "I cannot help you, you can't get by me stuff, you belong to 8th Street."

I went to 8th Street. I called Thursday and Friday on 8th Street and Sunday morning I went to Fourth Avenue, Brooklyn, and 1st Street. One is Markowitz, I remember. The other one I don't remember. I kill there Sunday, Monday, Tuesday, Wednesday, and on Friday morning. As soon as I start to kill my stuff I see four men. The men went in the market and told the marketman not to give me stuff. The marketman told to Mr. Markowitz, "Don't give him stuff." Markowitz said, "He owes me money for the few days he called before, and he killed me a little bit. This time I need to have more, and I killed a little bit. Sosnik [fol. 642] killed stuff before for me." I do not know who the four men are that came into the place that time. Sosnik was killing stuff. He took a package with a cop on the beat to follow him because the four men don't let him take the stuff out of the market at Fourth Avenue and 1st Street. I had the stuff killed. The man before that killed, and they don't let him take it out. He took a cop with a taxi and took the stuff off. I went and bring the taxi to the market to take the stuff. The four men told him not to take, and he went away. I took this three packages until the cop came back that followed the first man. The cop followed me, and I went home.

I killed a few days by Klieger & Gerber, and after that I went to Middle Village, Long Island, to Mr. Kruger. I killed by Mr. Kruger two days, Wednesday and Thursday. On Friday morning, as soon as I came I saw a machine there. I look and there is Arkie Weissler. As soon as

Kruger opened the place, Arkie went in and told him not to give us stuff, and Mr. Kruger told him he cannot do this, because he has got money of all the creditors, that for a few days before they didn't pay him for the whole amount, I must give him. Mr. Arkie said go in the office to call somebody. I told another man that was with me to call a police. He didn't have a chance to call because Mr. Arkie was in the office. After Mr. Arkie left t office I sent a man to call the police and it didn't take fifteen minutes there came a few officers and detectives, and the officer asked him to leave the office. He don't want to leave the office. The officer give him a few smacks in the face and after they made a charge against him in the court. The trial was on Wednesday—the same week there in Middle Village.

At the time I was buying from Klieger & Gerber I was [fol. 643] paying them for poultry sometimes 12, sometimes 14 cents above the market quotation. I never spoke to them about the prices they were charging. They used to weigh up the stuff and we would go home and pay the bills. I told him I couldn't stay because I couldn't pay so much. He said, "Any place you go, you must come back, because you wouldn't get."

After this I went to 38 Taylor Street. I know the address only. I called there about two weeks. On Thursday morning I came for stuff and I find the market is closed. I went to the apartment where he lives. I saw him come down. He had a bandage on the head. Next I went to Mr. Mike, on Hope Street. I call there three days, and on the fourth day, on Friday morning, as soon as I kill my stuff I see two men come into the place. I don't know the men. This morning I get and the next day they don't give it. I ask why they don't give it. He say they stop him off the stuff. After this I went to Sam Davis in Union Hill, New Jersey. I kill there about two weeks in September. And after they didn't have for me stuff, I ask him why. He said they stop him off. He said he can't get stuff, he hasn't any to sell. After that I tried two other people in Jersey City. One I kill two days and the other four days. They stopped him off. I ask them why. They said they stop him off, he can't get stuff. I went to 3rd Street, Jersey City, Mr. Steinberg. I called there about two or three weeks. On Thursday morning I was inside. The door was locked. I heard

somebody knock on the door. I see there is Moe Rosenstein by the door. He used to be a nice man. I know him twenty years. As soon as he came inside, he said, "Boys, go home, you can't get stuff here. Steinberg, you wouldn't get stuff for him," and after Moe went to the phone he called up and say, "Mr. Scull, I got them, I catch them," and he started to talk to me, "Finkelstein, I know you for a long [fol. 644] time; you get good treatment; go home; you get stuff in Coney Island." He took me home in his machine. He was with another man. I can't remember that man.

Then when I called a few times again by Klieger & Gerber, I went in 49th Street, Utica Avenue, and killed. I don't know the name, because I paid cash. Once on a Sunday morning I came to that place and the market is closed, according to the Sunday law. I went back to 8th Street to ask maybe they sell me stuff. I came in the market 6 o'clock. I ask Joe Scull I will get stuff. He answer me, "All right, wait for your next." I waited until 8 o'clock. They were finished all the killing and nobody was left in the market. I said, "Give me stuff." Joe Scull told me, "Leave it for tomorrow, don't kill today, tomorrow if you promise me you kill the whole week I will give you stuff," and I went home without the stuff, and I keep closed my place. I didn't sell chickens that Sunday. I didn't have the stuff. Only this day, Sunday morning. I remember it was in January. After that I kill in Coney Island. Sometimes I went outside to kill and sometimes I kill in Coney Island, if I get stuff. If not, I must kill with Klieger & Gerber. I kill all the time in this place since that time, except for a few weeks I kill by Harrison Brothers.

Klieger & Gerber started to charge less about six or seven months before the present time. Now they charge sometimes four, five, six, eight—I don't know direct how much they charge. On chickens they charge cheaper; on broilers they charge more. I told Mr. Klieger that I was going to complain about him because of the high prices he was charging. He say he can't charge cheaper. I told him once I had a statement by the District Attorney for five people want to buy from somebody, lots of stuff, and they [fol. 645] didn't sell it. I told him about the statement. He said, "I am not afraid of this, because the District Attorney get money." He said the District Attorney gets about a thousand dollars and he is not afraid from him.

Cross-examination.

By Mr. Jacobson:

The Witness: I was dealing with Gerber & Klieger. From Gerber & Klieger I went to Berman's place in July, 1927. Mr. Berman refused to give me stuff. He told me he cannot give me for no money, I should go to Klieger & Gerber. I owed Gerber & Klieger Monday the bill and I went to Berman on Wednesday. At the time I went to Berman I did not owe Gerber & Klieger any money, except for one day, Tuesday. They get paid by me after the week, and everybody likes this. I don't remember how much I owed; a little bit. Then I went to Markowitz, 1st Street and Fourth Avenue, from Sunday until Friday. Then I went back to Gerber a few days. I went there at one time in January, 1928, and these occurrences in Jersey happened a few weeks before that time. I didn't give Gerber a note for $300 at this time. I gave him a note in 1926 when the butchers started an association. When I went to Berman the note was paid up already.

I was a member of the Retail Butchers' Association in Coney Island. I was on a committee that went to the marketmen in 1927. Mornick was one of the committee. We went to the Coney Island marketmen on a Wednesday. We knew Thursday was the big killing day in that business. When that committee went to these marketmen we saw Scull, Harrison and Berger. We knew that they had already bought their poultry for their customers, ready to kill it the first thing Thursday morning. I didn't tell them I would not buy any of those coops unless they would give me back a cent a pound; that is not the reason Berman refused to sell me poultry; this was eight months later, when [fol. 646] Berman refused to give me poultry, I was on the committee eight months before, about October, 1927. I did not go to him many times because he refused me. He told me, "You cannot get poultry for a dollar a pound; go to 8th Street; you belong there," and I went there. I only went once that he refused. I bought poultry from him four days before this. I bought Sunday and Monday and this happened on Thursday morning.

I and a few other butchers, including Mornick, went over to Jersey and bought from a man named Davis about September, 1927. We bought from Davis until he had no more

poultry. I bought from him four or five weeks. I don't know that the reason Davis had no more poultry was that he failed; maybe he failed; he told me because they stopped me. At the time I gave that note to Gerber he was connected with Joseph Scull. The note was endorsed by my wife and my grocer.

By Mr. Kaufman:

The Witness: I have known Mr. Rosenstein for twenty years. I knew him when he was working in the market. When I saw him in Jersey he did not let me kill there. I was to go back with my car then and he told me, "Come, come, sit down; I will drive you home," and he took me home. At that time I was a member of the Kosher Butchers' Protective Association of Coney Island. I don't know whether Moe Rosenstein ever worked for our association. I saw Moe Rosenstein in Jersey City about 1927. I saw Arkie Weissler in Mr. Kruger's place, Middle Village. They had three charges against him in the court. One charge was that he didn't have a chauffeur's license. The second charge was that he didn't have his credentials, and the third charge that they found an ice pick in his pocket. I do not know what happened on that charge. They did not call me; they called only Kruger in the court, the mar-
[fol. 647] ketman. I did not know anything about those charges except what the policeman told me. Arkie sent away the truck which I paid $25. He told the truckman to go away and the truckman went away with that money.

Mr. Kroppy: I make the same motion to strike out the testimony of this witness as I made to the testimony of witnesses, Sandler and Bernklau.

The Court: Same ruling.

Mr. Kroppy: I want the record to show my objection to these last three witnesses, on the ground that their going over to Jersey for poultry was sporadic and does not constitute interstate commerce, and also on the grounds that the sales intended to be made by men in Jersey City to them did not constitute interstate commerce.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 648] The following testimony was given by the witness at this trial:

Direct examination.

By Mr. Rice:

The Witness: I was a butcher in Coney Island. I just left Coney Island on the 17th of this month and now have my business in Brooklyn. I paid 6 or 7 cents per pound above the market quotation in September and October 1931. Sometimes I got the quotation; sometimes I did not; then I didn't know. I paid the same in September and October of this year as before that time.

I attended one meeting of retail butchers in Coney Island on October 28, 1931. It was held in a synagogue. There were all the butchers and the wholesalers from Coney Island and Sheepshead Bay, but not Borough Park. The marketmen of Coney Island who were there are Abe Harrison, Sam Harrison, Morris Gerber, Joseph Scull. The Bermans were not there, they went out from business. The retailers asked Scull why he sold poultry to the retail butchers dearer than to the chicken dealers. He said "It isn't your business. It is my business. You cannot tell me what I should do; from the butchers what I should take or from the poultrymen what I should take." I don't know how much Joe Scull was charging above market quotation at that time. I did not buy from Joe Scull, I bought from Abe Harrison. He was charging five, six or seven cents; it was not all the time one price.

At the meeting the president asked Abe Harrison how much is he going to charge for the butchers and how much is he going to charge for the chicken dealers. He told him that for the butchers he will charge 5 cents kill straight—as for the chicken dealers, that, he said is nobody's business. He will do what he wants. Abe Harrison said that he would charge whatever price he wanted to charge. The president of the retailers' association, the vice president, were willing to give 5 cents a pound to kill straight, and the chicken dealers will pay a cent less, and Harrison said that is nobody's business, he will charge how much he wants. Not all the market men were charging one price. They all charged the same price to the butchers, but not to the poultry dealers. Somebody charges cheaper and somebody charges [fol. 649] more. Neither Joe Scull nor anyone of the Harrisons said anything about an agreement. They did not say anything else about prices.

Cross-examination.

By Mr. Perlman:

The Witness: I am a butcher. I am not a member of any association. I don't know of any retail butchers' association. The retail butchers in Coney Island and Sheepshead Bay buy and sell meat and poultry. They do not buy selected poultry. There is a chicken dealer besides the butcher. The chicken dealer buys and sells only poultry, no meat. The retail butcher and the chicken dealer both buy from the marketmen. This meeting in that synagogue was called by the retail butchers, not the chicken dealers. The chicken dealers did not come to the meeting. They were invited, but they did not come because they were not being hurt, but the butchers who were being hurt, invited the chicken dealers and the marketmen to come to meet with them. At this meeting the retail butchers wanted the marketmen to charge the chicken dealers more than they were charging them, so they should be able to charge the butchers less. They were taking from the chicken dealers 4 cents, so they would be able to take from the butcher five. If they took from the chicken dealer 2 cents, they had to take from the butcher 6 or 7. That was the reason for the meeting. This the marketmen refused to do, and stated at the meeting that they would charge people whatever they pleased. The marketmen refused to agree with the retail butchers about fixing the prices that would have to be paid by the chicken dealers.

Mr. Kroppy: All this testimony, if your Honor please, relates to intrastate transactions so I move to strike out all of this testimony on the ground stated and also on the grounds previously urged, that it is incompetent, irrelevant and immaterial.

The Court: Denied.

Mr. Kroppy: Exception.

Cross-examination.

By Mr. Perlman (continued):

The Witness: Nothing was said at this meeting of the retail butchers about unions. No representative of the union or a schochet, or a loader was there.

[fol. 650] TONY DI STEFANO, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony of this witness, given at a former trial in October, 1929, was read in evidence by stipulation subject to objections and exceptions as to its competency and materiality.

[fol. 651] Direct examination:

The Witness: I have been working for Barney Hecht three years. I remember some time a little before Easter in 1928 going with Hecht to Newark, New Jersey for poultry to a man named Newman. We had four coops on the truck, and a man came in and said he was a delegate of the union and he wanted us to put the stuff off the truck. So Newman told him, "What is he doing for it?" And he says, "I can't help it. You have to call up Tootsie and tell him about it." So they called up Tootsie. After the telephone call, Newman came out and he told me and my boss to take the stuff off the truck. And the delegate told us, "You had better lay off or there will be trouble if you don't be careful." He was going to throw us in the river. The delegate was Mr. Conlin. After he talked to us, we took the poultry off.

Cross-examination.

By Mr. Kaufman:

The Witness: I worked inside and outside—on the truck, too. I did not belong to the union. I promised to join the union but I did not join.

By Mr. Mehn:

The Witness: It was some time before Easter, 1928, when I was over in Jersey with Barney Hecht, my boss.

Mr. Kroppy: I make the same motion to strike out also on the ground that it is not binding on any of the defendant marketmen in this case.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 652] The following examination took place at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am working for Barney Hecht. I am working for him in 1927 and 1928. I am a chauffeur lodgeman. I work around inside and once in a while I go to Philadelphia for stuff and help load the truck.

I remember when Barney Hecht made an arrangement with the union for me to become a member of the union. Three or four years ago. I was not a union man at that time. I wanted to join the union. That was after I was discharged by Barney Hecht and they put in a man by the name of Weiss in there from the union. He was there for three weeks, then I asked Hecht for my job back again and Hecht said that he would arrange for me to become a member. Then I went to the union with a friend of mine, when some one from the union came over to Hecht's, they came over to see me. Then I and Hecht and the people from the union had a talk about Hecht making me a member of the union. Then Hecht didn't keep his promise to make me a union man.

Redirect examination.

By Mr. Rice:

The Witness: I deny that anyone told me that in the event that I was called here that I should turn everything upside down.

[fol. 653] Sidney Aronshick, called as a witness on behalf of the Government, first being duly sworn, testified as follows:

The following testimony, given at a former trial in October, 1929, was read in evidence pursuant to Stipulation as [fols. 654 & 655] in the case of previous witnesses.

Direct examination.

By Mr. Oseas:

I am now in the butcher business three weeks. Before that I was in the poultry business about five years ending April, 1929, selling slaughtered poultry. My last place of

business was at 941 East 180th Street, beginning some time in November, 1927, and ending in April, 1929. I bought my poultry when I first started in business at that address from Schiller & Levy, 417 East 93rd Street. (Witness identifies both defendants.) I stayed with Schiller & Levy about four weeks, up to November, 1927. Then I went to Kalman Gross at 967 Longfellow Avenue. He charged me, when I first bought from him, about three and four cents a pound, up to five cents above the market quotations for about two months; then he started to charge from seven to ten cents a pound above the market. At that time he said expenses were too high and he had to pay so much to workers and everything else, and he must charge a little more.

After that I went to Schiller & Levy. I got poultry there a couple of days. Then I went back to Gross again because it was too far to go to Schiller. Schiller did not refuse to give me poultry. I also tried Joe Mines, on 75th and Avenue A, just a couple of times; he gave me poultry. The third time he was afraid to give me poultry; he said he was watched by somebody, that he cannot sell me any merchandise. When he did sell me poultry, I always took it in my own car. He left poultry for me in a butcher shop on 76th Street because he was afraid to sell it to me direct from his place.

I remember being followed by a taxicab in July, 1928. I went to call my partner on Boston Road every morning to go to a chicken market to buy poultry. As I stood waiting [fol. 656] for my partner, someone stood across the street watching me. I didn't know about it. As I pulled away to go to the market, my partner noticed this taxi following us. Nobody was in the cab, just one man driving the cab. I said, "Take the number of the cab and we will report it to the police station." I fooled this taxi, I went around the corner in order to lose him, I went around the corner to Westchester Avenue, and finally I met him there again with Irving Yarmouth, Gross' partner (Witness identifies Yarmouth.) He spoke to Irving and finally I went away with my car to 163rd and Hunts Point Avenue. He cut in ahead of me and said, "Don't go any further; I will break your neck." I got an officer and the officer wanted to know what it was about, and the taxicab driver went away. I couldn't get him.

I was followed another time by Irving Yarmouth and Alter Kupersmith. Kupersmith was also a partner of Mr. Gross at that time. I was buying my poultry when I was followed, at several places. I remember being followed one day when I went to buy from Joe Mines. Somebody followed me. I think it was Irving. I don't know what he spoke to Mines, but the second time I couldn't get any poultry there, that is, I didn't go to get poultry in that market any more.

I also tried to buy from the Heights Poultry Market in Jumel Place. I went there and got my poultry from the first day, and the second day I was followed by Irving and another man in a car with Irving, and he walked in there and told him not to sell me any poultry. I wanted to get an officer to have him arrested, but could not get an officer. The name is Kusinitz. I asked him to sell me poultry and he told me a long story. He says he has a fight with some customer and if he don't get the customer back he will sell me all the poultry I want, and if he does get the customer back he will give me a place where I can get my poultry, I [fol. 657] will have to go back to Gross and get my poultry in a good way. He sold me for a week or so. Then Saturday night he told me a long story, he should not sell me any poultry because he said his brother is threatened in Washington Market with his life, so he will not sell me any more poultry.

I went back to Mr. Gross and I got poultry, of course, but it was not what I wanted to get and it was not the time. I did not have any conversation with Gross when I went back to him. Before I went back to Gross, I went back to Schiller and he gave me all the poultry I wanted again, all I could buy. He said, "I will sell you poultry but I am afraid"; he said he paid them $100 fine for selling me the first week that I bought there. He did not say to whom he paid the fine. He told me of course my credit was good and he would give me all the poultry I want, but I left Schiller during that month and I was not a steady customer there, and he could not sell me any poultry after that. I asked him who he was afraid of, and he told me the trust. I said, "What's the best thing to do, Mr. Schiller?" He said, "The best thing to do is to go down to Ben Simon, the Chamber of Commerce, and ask him that you be my customer, and I will allow you to kill here as before." My partner went to Ben Simon. Schiller said, "If you had come down here before

the trust began, I would sell you poultry, you would be my customer, but now I can't do it, you must go back to Gross." I told him I was a customer there four years, "Why don't you give me poultry now?" He said, "Go back to Gross and pay your bill, then I will see whether I give you poultry."

So I didn't go back to Gross to pay his bills because he treated me so bad, and I paid him a week after that. Then I bought off Gross all this time until I sold my place. In between the months I bought of Gross, I went once or twice [fol. 658] to Schiller & Levy, and Schiller & Levy sold me poultry then.

Cross-examination.

By Mr. Jacobson:

As to this taxicab incident, it was in 1927, the time I couldn't get any poultry; it was about 6 o'clock in the morning, before the regular hours of business. I had been dealing with Schiller & Levy for about three years, from 1924 until November, 1927. Then I went to Mr. Gross for five or six months. During that period of five or six months I dealt with Schiller, too, and with Hornstein & Spatz. After the five or six months—that was in 1928—after I stopped dealing with Gross, I dealt with Joe Mines and the Heights Poultry Company; those are the only other two places I dealt. During those five or six months, Gross charged three and four cents above the market for two months, and then he began to charge seven to ten cents above the market, and I went back to Schiller & Levy. I had been away from Schiller & Levy for two months and had not traded with them during that time.

Going back to the time that I quit trading with Schiller & Levy, in November, 1927, they were charging me a fair price. I did not have any trouble with Schiller & Levy. When I got Schiller & Levy I never knew there was an association. When Gross charged me that higher price it was while the trust was on. I can't remember what month; I know it was in 1927. I began to trade with Gross in November, 1927, and he charged me three or four cents above the market about two or three months. After that he charged me seven to ten. When I dealt with Gross I

paid my bills, but that week while he did not give me poultry I left an unpaid bill and I went to Schiller & Levy. They gave me poultry, and then Mr. Schiller told me I have to go back to Gross and pay my bills. I did not do it right away, but I went to Joe Mines first, in Yorkville. [fol. 659] I do not know whether he is a retailer or wholesaler. I bought from Mines for a couple of days and also from the Heights Poultry Company, and then I was told they could not sell me; they did not say anything else. They were afraid because their brother was downtown in Manhattan in Washington Market, and they were afraid to sell any poultry. Then I paid my bill to Gross and continued to do business with him. The only reason Schiller gave me for not selling poultry to me was that I had not paid my bill to Gross. Otherwise Schiller & Levy always sold me poultry.

[fol. 660] The following testimony was given by the witness on this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I quit the poultry business about two years ago. Since then I don't know anything about the poultry business at all.

[fol. 661] GEORGE SKLOOT, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a live poultry slaughterhouse man. I am in a corporation with my father and brother. I was a member of the New York Live Poultry Protective Association and also the Secretary for about six months previous to September 8, 1931. Exhibits 26 and 33 appear to represent the membership of the New York Live Poultry Dealers Protective Association while I was Secretary. I am a member and Secretary of Live Poultry Slaughter-

house Association. I believe the markets named as part of Exhibit 29 are members of the Live Poultry Slaughterhouse Association except Harry Dworkin. The list on Exhibit 29 is not complete. At the time that list was compiled I think there were about 200 names. Most of the markets listed on Exhibit 26 are members of the Live Poultry Slaughterhouse Association.

Mr. Kroppy: I move to strike that out.

The Court: Denied, I don't know if it makes any difference. It may.

Mr. Kroppy: Exception.

The Witness: Most of the members of the Live Poultry Dealers Protective Association became members of the Live Poultry Slaughterhouse Association. There might have been 15 or 20 who did not do so.

The Live Poultry Slaughterhouse Association was organized on September 8th, 1931. The class of people who became members are slaughterhouse men of Greater City of New York and vicinity. About a month or two prior to September eighth, several marketmen held an informal meeting at the railroad on West Washington Market. We discussed the evils in the industry and the methods of correcting them. We also had a meeting prior to September 8, 1931, at the office of George Mintzer. There were present, George Mintzer, Gustavus Rogers, Charles H. Tuttle, myself, Mr. Gelbutch, Louis Yedvabne, Joe Laub, Louis Gerber, Abe Harrison, Al Winkel and Harry Steinberg. Louis Gerber is not a brother of Morris Gerber, and not in the same market as Morris Gerber. There was a general discussion of the evils in the industry, and at the conclu- [fol. 662] sion of the meeting, Mr. Tuttle suggested to the slaughter house men that they get together a committee and put on paper exactly what the evils in the industry were, as it appeared, in their opinion. It was suggested that the men who were there get together the next afternoon, and they acted as a committee. I acted as chairman of the committee. As such chairman, I did not prepare a program to be adopted by the Live Poultry Slaughter House Association. I prepared a statement upon the asking of Mr. Tuttle of three specific questions:

First. Enumerate for me the evils as in your mind appear to be existing in the industry;

Second. Enumerate to me how you think these evils can be rectified;

And third. Upon the rectification of these evils, what benefit would be derived by the slaughterhousemen and what benefits would be derived by the public.

I did prepare a statement which I later submitted to Mr. Tuttle or Mr. Mintzer. Exhibit 10 for identification is a correct copy of the statement that I prepared.

Mr. Rice: I offer it in evidence.

Mr. Perlman: I object to it on the ground that it is not binding on the defendant Rosenman; incompetent and immaterial.

Mr. Kroppy: I object to it on all the grounds previously urged; it does not tend to prove any conspiracy in restraint of interstate commerce.

The Witness: Nobody came to help me. It is my preparation of the statement; it was not adopted by this committee. It was gotten up by me and it went directly to Mr. Mintzer. Nobody else touched it in between. This was my statement.

The Court: The objection is sustained; it is inadmissible at this time.

The Witness: Most of the discussion lay in what the evils were. Then I went about in my own head to discuss what I would recommend as a rectification. I did not become chairman. If I was the only one left on the committee, I appointed myself chairman. I was not pointed out by Mr. Mintzer or Mr. Tuttle or one of the marketmen present as chairman. I took it on myself to prepare that statement.

[fol. 663] If you call every time I meet a man, another market man, a meeting, then I would be having meetings continuously for the past three years. I have met one man at a time, and discussed business with him, and I have met ten at a time and discussed business with them. It was part of my function; it was part of my duties; I was secretary and I was trying to find out things to help us along and every time I met anybody I spoke to them. I asked them and they told me what they thought was wrong; that is what a meeting consisted of; there was nothing specific at any time, except when I of my own volition wrote that.

At the meeting in Mr. Mintzer's office, we discussed the question of shrinkage of poultry, short weights, and credit. We did not discuss elimination of competitive bidding. Nothing was said to me about elimination of competitive bidding by any of the marketmen. I discussed it with Mr. Tuttle and Mr. Mintzer when there were no other marketmen present. The deductions and rebates discussed at the meeting in Mr. Mintzer's office specifically refer to deductions and rebates gotten from us by customers who were not supposed to get them or who claimed them for no reason at all. Nothing was said at the meeting about saving $1,955,000 by the elimination of competitive bidding. I figured that out myself, without the aid of any other marketman. I did not discuss it with any other marketmen after I had computed it.

(No cross-examination.)

Mr. Kroppy: I move to strike out the testimony of this witness, on the ground that it does not tend to prove the existence or the continuance of any conspiracy in restraint of interstate commerce on the part of any of the defendants, nor does it tend to connect any of the defendants with any conspiracy in restraint of interstate commerce.

The Court: Denied.

Mr. Kroppy: Exception.

Nor has this witness testified to any conspiracy or to anything that might be considered as overt acts in the furtherance or in pursuance of a conspiracy in restraint of interstate commerce, and I object to it on all the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 664] MAX COHEN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a marketman of live poultry in Harlem. I was a member of the Harlem & Bronx Poultry Board of Trade, but I resigned at one meeting I attended.

That was on October 17, 1931, when I was called up by Max Wolas. He said that we should form a credit association and that each one should put up dues $50.

Mr. Perlman: I object to the testimony of this witness on the ground it is incompetent and not binding on any of the defendants except the defendant Wolas, and on the ground that this is only for an alleged conspiracy; to have been entered into by these defendants; it is by way of narrative and not binding on any of the defendants.

The Court: Over-ruled; it is admissible for an entirely different purpose, proceed.

Q. What else did Mr. Wolas say when he invited you to attend the meeting?

The Court: I will say specifically it has a bearing on the question whether or not certain events which might be decided to have constituted a conspiracy whether there is a danger of a continuance of the evils which are alleged to have resulted from the conspiracy should recur in the event an injunction should not be granted.

Mr. Perlman: Exception.

The Witness: About 90% of the wholesalers from the Bronx were present. Harlem is very small; they only got maybe two or three altogether. Max Wolas called the meeting. He got up and made a speech and he said it is legal to have a Credit Association. Wolas and Charley Siegel did most of the talking. All that Wolas mentioned was that we are to have a credit system to operate by forming a corporation. Counselor William Greenfogel was there and they were figuring out with the counselor, they will have 2% to cover the expenses for running the office. That is all the talk there was. Charley Siegal was talking. That is the best proposition to be done; that is all. 2% of the business done by those people who joined the Association was to go to maintaining an office and covering expenses.

About forming a Credit Association, Max Wolas said that if a customer comes to me and he owes another marketman $400. I could give him for cash, but I wouldn't [fol. 665] give him for trust; I wouldn't trust him. A customer was not to be given credit unless he had paid his bills to a prior marketman. Whether the marketmen there

agreed to that, I don't know because they decided to have another meeting and they didn't call me for the other meeting. It was discussed by some of the marketmen at the meeting; some of them didn't agree; some of them did agree. Charley Siegal and most of them were in favor of it.

The custom of the trade in regard to paying the bills to marketmen is for the customer to pay weekly, on Monday, for his purchases during the previous week. He never pays before Monday. Some of them come around Saturday and they want to buy in another place; they give me the bill; they pay me the bill and they say "I don't like to deal with you." If a customer wanted to go away from me in the middle of the week and buy from another marketman he would have to pay my bill up first. The custom of the butcher, he don't go away in the middle of the week; he finishes the week. If he wanted to go away in the middle of the week that was arranged; that is, that's the way we run the business, he couldn't go away, excepting he paid.

Most of the 27 marketmen present paid the initiation fees of $50 to a Secretary there. Wolas had a bookkeeper, a secretary, Alex is the first name; I don't know the second. I gave a check for $50 to pay the initiation fee. I stopped payment on that check on Monday following the meeting on Saturday. They never called me any more. I did not talk to anybody before I stopped payment on the check. I gave the check on Monday, October 19. I bought poultry on the following Wednesday in West Washington Market. What happened was that Mr. Hawk, a commission man to whom I had given a check told me plain, I am holding him up on two weeks and he wouldn't sell me any poultry. On Wednesday, October 31, Sol Frankel who is a commission man did not sell me any poultry. He didn't mention why; he wouldn't talk to me. He said he didn't have for me any poultry. That was the answer of Bert Frankel. Hawk said I gave him a check a week later for $147 and when he had plenty of stuff on the stand, I was asking for poultry [fol. 666] and he said "You held me that check up too long." That was the answer. He said that I had held up a check for a prior purchase too long, and therefore he wouldn't give me any poultry. On that occasion on

Wednesday, October 31, I didn't owe Hawk or Frankel any money.

By the Court:

The Witness: I had held up a check of Hawk's about two weeks before. During that two weeks before October 31st I had not bought any poultry from him. I had bought some poultry from him and held up a check and the next time I went down there two weeks later, he wouldn't sell me any. He said the reason he wouldn't sell me was because I had held up the check. The check had been given to him already. It wasn't a bad check. He said I had held it up on him, and I had held it up on him.

By Mr. Rice:

The Witness: Frankel did not give any reason at all after that for refusing to sell me.

Harry Shomer has been in my market, the early part of July, 1931. At that time I kept three men of Local 167, and I says "Will you relieve me?" I said "Take off one of them and I may be able to transact my business." He says if I want to run wholesale, I must have three men. That was including the schochet, too. In the earliest part of May 1931 I had four, one schochet and three men. I couldn't afford it and I was talking to Harry a couple of times and I says "Try to relieve me." He said "You got to wait till the end of May." He did relieve me, he left off one man. He said "I am going to take off one man and I will let you have two men and one schochet."

I was selling in May 1931 about 9,000 pounds a week. It is a very small market. We were two partners and we employed three people from Local 167 and one rabbi, that is four.

Q. How many did you need with that amount of business?

Mr. Kaufman: I object to that.

The Court: Over-ruled.

Mr. Kaufman: Exception.

The Court: He has got some definite facts; he knows how to run his business.

Q. How many men and how many shochtim did you need [fol. 667] with 9,000 pounds of poultry per week?

Mr. Kaufman: I object to that on the ground that it is incompetent. Assuming the railroad official might say he can get along with one-half of the staff, but they have made their arrangements with the union and they carry out those arrangements with the union.

The Court: Over-ruled.

Mr. Kaufman: Exception.

The Witness: Naturally, the business fell away in the summer-time 5,000 pounds, half of it, at that time I was able to run my business with one man and one shochet. The business fallen off by the week 4,000 pounds from the 8th of June, and July I made an appeal to leave me off a man; they wouldn't listen to me. I asked him a couple of times, Harry Shomer, a delegate, that he should let me work with one man and he refused. The end of July I couldn't afford to keep two men and I laid them off all the three, and I asked also for one man and they refused to give me it. I said "I don't need so many" but without the shochet, I couldn't keep open the business, so naturally they sent me back again the two men. It was closed on Monday and Tuesday morning we were settled to have the same two men and the shochet back again. I had it closed for two days, prior to the time Harry Shomer reduced the number of men from 3 to 2. He says "If you don't get two men, you can't sell any wholesale, with one man you can only do retail. That is the rule."

At the meeting I attended on October 17th, 1931, there were Simon from Van Ness, Izzy Gordon from Bedford Avenue, Sam Manne, Joseph Mann, Kalman Gross, Benjamin Steinberg, Sam Cohen, Max Wolas, Mooney Siegal, Kuzenitz of the Morris Avenue Poultry Company, Plotkin, and Charlie Siegal of Plotkin & Siegal, and Slaybod of Slaybod & Kasten.

Cross-examination.

By Mr. Kaufman:

The Witness: In May of 1931 I had three men and a shochet. In June and July the business always falls off and I said to Mr. Shomer that I wanted to be relieved of one man. He told me that there were so many union men out of work that they wanted to keep as many men working as possible. I was looking out for myself; I wasn't trying

[fol. 668] to keep their men employed. In July I brought in Mr. Shomer again and told him business was falling off more and that I couldn't get along with the three men, and he took one of the union men off. At that time he didn't tell me that it was a pity that the union men were out of work and their families were starving.

In the summer of 1929 I had some trouble with my partner, and wanted to buy him out. We were unable to pay our bills and I wanted my partner to put some more money into the firm, and he wouldn't do it. Then I went to the union again, and saw Arthur Herbert. I told him I was trying to raise enough money to get rid of my partner, and asked him to take away another union man so that I could save some extra money and thereby get rid of my partner a little quicker. It was after the holidays in September that I went to Arthur Herbert and said "I am trying to get rid of my partner and I want you should take another man away so that I can save some money, and get rid of my partner a little quicker" That was after the business was killed. When we had holidays I had to keep two men and I did keep the two men but after the holidays it wasn't worth enough for one man; I asked him again to relieve just one man. That is why I asked him after the holidays, to relieve me of the one man, and he did it. After the holidays I was getting along with one man and one shochet. On Thursday and Friday I got in an extra man. I still got that one man and that one shochet. I have a contract with the union. That contract provides that I am to have four men and one shochet. Nevertheless, the union gave me the privilege, because I was not doing so well, to have only three men and one shochet till 1931. In July they consented further that I should only have two men and one shochet, and at the end of September, they consented that I should have only one man and one shochet. In the summer of 1931 when I was having trouble with my partner, I did not have much money in my business, and our bills were behind; we owed money in the market, and our bills in the market were past due, all during the summer and fall of 1931. At the present, no. Prior to the 21st of October 1931 I bought merchandise from Hawk,—the last time about the 5th, 6th or 7th of October. The bill for that was due to Hawk on the 12th and I gave him a check on the 21st of October.

At the time I paid him I asked him for stuff. He said he [fol. 669] did not want to sell me any merchandise because I was a slow payer. In September 1931 I made a C. O. D. purchase from the Acme Commission Co. because he would not sell poultry except for cash, and I gave him a check. Then I stopped payment on the check.

Further cross-examination.

By Mr. Perlman:

The Witness: I paid my schochet $65 a week up to last week; $55 now. He is a union schochet. I have had a contract with the Schochtim Union which provides that I shall pay the schochet $65 a week. I recently went to the office of the Schochtim Union and asked permission to pay less than $65 a week to my schochet. I told Charlie Herbert that business was bad and I could not afford to pay $65. I wanted to continue to have a union schochet and pay less. Charlie Herbert told me that he would see my schochet and try to induce him to work for $55 a week. He went to the union schochet and pleaded with him to take $55 a week, and that is why I am paying $55 a week. During the last three years no member of any union or any officer or any delegate from any union has told me from whom to buy my poultry or to whom to sell my poultry, or at what price I should sell my poultry.

Redirect examination.

By Mr. Rice:

The Witness: Before October 1931 when Hawk would not sell me, I was never refused poultry at West Washington Market. I bought there steadily. I never go outside. That is the first time I was refused. I know of other marketmen in New York who have signed contracts with the Schochtim Union or with Local 167. They do not all employ two schochtim and four men; they employ sometimes three men. Their contract is the same contract as mine. I know many instances where they do a wholesale business and yet they do not employ four members of Local 167. I have seen the contract with the Schochtim Union to do a wholesale business. The contract requires me to take one schochet and one helper. I know a man

he has got a wholesale place and he is only running with three union men, one is not a union man. He has signed a contract with Local 167 and one with the Schochtim Union. I have to keep a salesman, also a union man; some marketmen keep salesmen that are not union men.

Recross-examination.

By Mr. Perlman:

[fol. 670] The Witness: The wholesaler who has three union members in Local 167 is on 121st Street. He employs a strict union schochet. I don't know of any marketmen that have made a contract with the Schochtim Union who do not employ a union schochet. If you slaughter 50 coops a week, you only have to have one schochet, and you don't have to have a helper. When you start slaughtering more than 50 coops a week, then you have to have a helper, and sometimes two schochtim. It all depends on the number of coops above 50 coops that the market slaughters a week. The contracts made by the marketmen are all alike. When they slaughter 50 coops or less, there is only one schochet; when it goes to a hundred there will be two schochtim a week, and if it is 150, maybe three.

Further recross-examination.

By Mr. Kaufman:

The Witness: The market on 121st Street has three union men and one non-union man. It is the market of Jaffe & Wolas. The man that works there who is not a union man is Jack Loeb. He used to be my former partner. I don't like him.

Mr. Kroppy: I move to strike out all the testimony on all the grounds previously urged and also on the ground, as far as the Harlem and Bronx Credit Association is concerned, that is a separate and distinct organization which has no relation at all to and has not been connected with any conspiracy of marketmen or with any of the defendants in the case and hasn't any relevancy or materiality to this case and I move to strike it out on all the grounds previously urged.

The Court: Motion denied.

Mr. Kroppy: Exception.

[fol. 671] JOSEPH HASENFRATZ, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The following testimony of this witness given at a former trial in October, 1929, was read in evidence by stipulation subject to objection and exception as to its competency and materiality.

Direct examination:

I have been in the chicken business, selling slaughtered poultry, twenty-one years altogether. I have been located at 921 Blake Avenue about eight or nine years. During the summer and fall of 1927 I was buying stuff all over. In 1927, the 17th of July, David Hurshon called me in his place and said, "Listen, you belong to me and Jacob Mintz." I says, "Why?" He says, "We have got an association and you are going to kill with me and Jacob Mintz." I said, "No, I will not; I am going to kill all over." He said, "Nothing doing; you are going to stick to two places," and I said, "I will not." He says, "All right, we will see."

After that, I was trying once by Koslow. I got poultry for cash. I also tried at Frisman & Azwolinsky, and Mirotznik, 817 Liberty Avenue. I can't remember any other places. After that I used to buy from Mintz and Hirshon. They charged me four, five, ten cents, fifteen cents, sixteen cents above the market. They used to buy sick poultry in West Washington Market and I was paying their price. That was Mintz.

I had one conversation with Carl Firestone. I asked him for $5 and he says, "Here is $5, how long do you intend to live?" I don't remember any other conversation with him. I had a conversation with Hirshon two days before the bomb exploded. He called me in his house and he says, "Listen, Joe, I will give you the balance what I owe you to wipe it off, I will give you $25,000 if you be a good boy; I give you your own price for poultry." I don't remember that he said what he meant by being a good boy. He said if I would not be a good boy, I would be surprised; "You will get it so dirty you will be surprised."

[fol. 672] Q. Thereafter, what, if anything, happened to you?

A. A bomb exploded.

Q. Where?

A. In my house.

Mr. Kaufman: I move to strike that out. I object to it. It is highly improper and is prejudicial to the defendants.

By the Court:

Q. Were you there?

A. Yes.

Mr. Kaufman: I move to strike it out. It is prejudicial to these defendants unless some connection is shown with respect to defendants other than Hirshon, assuming it is an admission against him.

Mr. Oseas: What a defendant says to this witness?

The Court: Objection overruled.

Mr. Kaufman: *Exception.* I move for a mistrial upon the ground the testimony is highly prejudicial against the defendants, particularly because no connection with this incident has been shown with any of the defendants.

The Court: Motion denied.

Mr. Kaufman: Exception.

Mr. Sager: Exception.

By Mr. Oseas:

Q. Where was that explosion?

A. 920 Dumont Avenue.

Q. Is that your home?

A. That is my home.

By the Court:

Q. What was the date of it?

A. The 19th of August, 3 o'clock in the morning.

Q. Where was the explosion?

A. At my kitchen door.

[fol. 673] Q. What damage was done?

A. Everything, the whole house broke.

The Court: I will allow the testimony to stand there was an explosion by the door.

By Mr. Oseas:

Q. Go ahead. Was anyone injured?

A. My wife cut herself in the shoulder; the plastering came down.

Q. You were in the house at the time?

A. Yes.

Mr. Kaufman: I object to this testimony as being highly prejudicial. You only permit it to stand, the fact that there was an explosion?

The Court: Yes. Go ahead.

Mr. Kaufman: Then I ask your Honor, as far as the District Attorney is concerned, to stop this line of inquiry.

The Court: I will allow him to show what damage was done.

Mr. Kaufman: Exception.

Before that time I had been to see you. I didn't speak to the defendants about coming to see you. I did not talk to them. They would not give me any chickens. I did not talk to Hirshon for a good while. Carl Firestone told me, "I am going to give you a bullet in the heart." That was May or July, 1928. Koslow said I should not be so mean, I should not go to get the chicken dealers against them. In July, 1928, Mintz said that if I go to the Attorney General he would not give me any chickens. I would not get any chickens, that is all.

Cross-examination:

This Dave Hasenfrantz who testified here last week was my brother. He conducted a slaughterhouse market. I [fol. 674] did not buy goods from him during the time that I bought from these other people or at any time before that. These other people sued me but I did not owe them. I had a talk with Hirshon on July 17, 1927. This other conversation with him was on the 17th of August, 1928. There was an explosion in my house on the 19th of August. I live in a four-family house, on the top floor. The explosion was in my apartment. I was not insured. I had a gas range and my wife used it.

I bought from Taits & Company and Mirotznik in Brownsville on credit. I also bought from Hirshon on credit. He told me if I will be a good boy he will give

me the balance what I owed him. I didn't owe him any balance. He asked me for a thousand dollars or $1100, I can't remember that exactly, or $1200, I do not know exactly. That is in the lawyer's hands. I bought from Mintz on credit. I owed him $1000. I bought from Kadin on credit.

During the time I bought from these people I was buying from anybody I pleased. I was then a chicken dealer, buying from the marketman. My brother was a marketman, but I was not buying from him. His place of business was also in Brownsville, two blocks away from me.

My apartment is on the top floor, one flight up. There were four families in the house, two downstairs and two upstairs. You get into the house through the hallway that is used by all the families. My apartment consisted of a kitchen, dining-room and parlor and a bedroom. This happened at 3 o'clock in the morning. To get into my apartment from the hallway I had to open a door. I do not lock any door in my apartment, only the kitchen. The kitchen is where this explosion took place. From the hallway, I enter into my kitchen and then go into the rest of the apartment. The kitchen door is locked every night. I did not see anybody around there at the time.

[fol. 675] By the Court:

This explosion was outside the kitchen door—everything broke inside, the roof and everything. No gas pipes were broken. They found the wire and cotton. On the first floor was a butcher—the store was empty at the time.

By Mr. Jacobson:

At one time I conducted a slaughterhouse market. I failed in that business and it was settled. I do not remember that during the last week or two that I was in business I bought a lot of poultry in West Washington Market; I bought stuff all the time. I sold all the time, credit and cash.

Q. Don't you know that you collected the money on the cash sales and you said you gave that to some restaurant man—you testified to that?

A. I paid him, I paid him $600.

Q. Don't you remember that the restaurant man denied that he ever got a nickel?

A. I paid him, I paid him, yes.

Q. Didn't the restaurant man testify that you didn't even owe him a nickel?

A. I was not present when he testified. It was after that that I became a chicken dealer.

Mr. Kaufman: I move to strike out the testimony of this witness which indicates or tends to indicate that the explosion was the result of a bomb. It is clearly a conclusion of the witness and is not a statement of fact. Upon the further ground that it is in no wise connected with any of these defendants.

The Court: Motion denied.

Mr. Kaufman: Exception.

Mr. Jacobson: If your Honor please, I make the same motion on behalf of the defendants I represent. I move to [fol. 676] strike out the testimony of the witness as to the occurrences, as he alleges, of August 19, 1928.

The Court: Motion denied.

Mr. Jacobson: Exception.

[fol. 677] The following testimony took place at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: The trouble I had started in July of 1927 and stopped in 1930. It stopped before the criminal trial in October, 1929. It hasn't stopped yet. They are still after me. They still want to get me but they can't get me. I get my poultry wherever I want and I get whatever I want. I have been getting if wherever I want and whenever I wanted it for several years. I have been buying my poultry wherever and whenever I wanted this year and in 1930 and in 1929, the year of the criminal trial. In 1929 I had a fight with Tootsie Herbert on the 15th of January, 1929. That is the last fight we had. In 1929 he sent Frank Narra—his right name is Louis Ludkin to cut me up at Bedford Avenue. This Frankie Narra, he is a gangster. I know he is a gangster. He wanted to cut me up at Bedford Avenue with a big knife and I said if you don't get out of here I will blow your brains out, and he went away from me.

Redirect examination.

By Mr. Rice:

The Witness: Arthur Herbert stopped me from getting poultry in 1929. About six or seven months before the criminal trial Louis Mirotznik and Holman both told me, and I had to get a squad of detectives to watch the market. They said to Tootsie Herbert what do you want to do with Joe Hasenfratz? He said "Nothing." They said what do you want to bother with him for, so he said, "I don't want to bother him now; he is only a rat." The last time I had any trouble in 1929 was in May and June, just before the criminal trial. Louis Mirotznik told me "If you go on the stand and testify, you will get no poultry." I went on the stand and I did not want to testify. He told me that at the time the case was going on. And Kleinman told me the same thing. He said "If you go on the stand, you get no stuff."

Mr. Kroppy: I move to strike out all the testimony on all the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

Recross-examination.

By Mr. Kaufman:

[fol. 678] The Witness: When I go into the market some give me credit and some don't. I don't buy from the West Washington Market. I am a retailer. I buy from Mintz. I deal only in slaughtered poultry. I used to be a marketman in 1921. Since that time I have not been a marketman. I do not have any union men working for me. I had one union man, when I had the market. Since that time I haven't had any union men at all. I buy on credit from Mintz and Louis Mirotznik. When I buy from Hirshon or Mannie Gordon I have to pay cash. There may be two more to whom I have to pay cash. I don't say exactly, some I get credit; some I have to pay cash.

[fols. 679 & 680] Mark Gelb, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination.

By Mr. Oseas:

I operate a live poultry market. I buy my live poultry at West Washington Market and the railroads, all over. I have been in that business the last six or seven years. My place of business at the present time is 25 Withers Street. I have been doing business at that address three years and the name of that market is Gelb & Einhorn. Sometimes they call it the Withers Street Market. I am acquainted with the defendants David Kaufman, Sidney Rosenstein and Samuel Sahn (identifying the defendants).

I had a little conversation with Samuel Sahn in October, 1927, but not with anybody else. I had two or three butchers at that time and the union at that time had an awful lot of men going around looking for work, so they wanted to place men wherever they could find any room for them, they wanted to place men. I have two or three butchers at the time and Mr. Sahn offered to give me $50 a week if I would give him the two or three butchers because I was not able to take care of them at the time; he knew I was not able to take care of them. He said he would give me $50 a week if I would give him my two or three accounts I had at that time. I told him that just at that time I could not give him an answer right away and I told him that I would give him an answer some time during the week. Then he walked out of my place. He told me I can give him my answer at any time. I did not decline his offer, because I told him I would have to speak it over with my partner and I would give him my answer some time during the week. Nobody else was present during that conversation. Poultry came into our place of business every day thereafter.

[fol. 681] A few weeks following the last conversation I had with Mr. Sahn, he happened to pass my place of business and he stopped off. I told him that proposition he gave me, that I would accept. I was supposed to give

him a couple of accounts that I had, butchers that I had, and he was supposed to give me in exchange $50 a week. I had two accounts at that time. Sahn told me that if I will give him the two butchers, he did not say exactly two, whatever I had, that he would give me in exchange $50 a week for them. Before I had this business, in reality those butchers belonged to him; they were his accounts before I had them. I had those accounts and if I stop selling them they would go back to his place, where they dealt before, and likely he would get them. His exact words are: "You cannot take care of any butchers in here; if you want to do wholesale, the union is bothering you; now there is a lot of men out of work to-day," and if I take on more butchers they would not go after me because I have already had men in my place and two or three more they won't bother me; "so if you will give me the two accounts which you are only able to make about forty or fifty dollars a week from them, I will give you $50 a week for them." That is all he said. It passed a few weeks, and one week I would get it and the next week I would get it and possibly a few weeks I would not get it, and then a couple of weeks I would not get it, and I met him and I asked him if I take back the butchers, and he came into my store. Those butchers went back to Sahn.

I remember having a conversation at the Chamber of Commerce thereafter. I just happened to be up there. I saw Samuel Sahn, Brown from Irving Poultry, Seewald and Fertig, Morris Gerber from Williamsburg, and I believe David Hirshon. A few more; just at present it slips my mind. I didn't see any Benjamin Simon there. I was not well acquainted with them at that time to know them. [fol. 682] I don't remember seeing any of the Herberts there. I think Joe Usin and Ben Zimmerman was there. There was quite a number of market people. I happened to be up there—just happened to be a meeting at that time. It was a Monday. The Chamber of Commerce had their meetings on Monday and I went to see Fertig, who happens to be a cousin of mine; from Fertig & Seewald. All the market people were there at that time and I seen Sammy Sahn and I asked him why didn't he pay me last week's $50, so he told me business was very slack at that

time, that was the summertime; it is generally a slack season in the poultry business, and as soon as business picks up he will pay everything back that he owes me. That was all that he said.

When Sammy Sahn did not pay me the $50 at that time, when I heard the argument, I had the two butchers back again. I went over and solicited their trade again. Before I went to the Chamber of Commerce, I had started selling to butchers a month or two before. I have said before, there was no meeting at the time, it was only the day of the meeting. I told you the conversation I had with Sammy Sahn about the argument, he didn't pay me the $50 for the previous week, and I asked him why didn't he pay it to me. My side of the argument was, the reason I took back those two butchers was because he didn't live up to his agreement, and his side of the argument was that business was bad, that he could not pay it at the time, that he would make everything up to me when the fall season comes around. I didn't have a thing to do with Sam Gold and never said a word to him. Brown just mixed in, quieting his voice down and told me why can't I see it Sam Sahn's way, as far as he knows of him he wouldn't try to do me out of everything or the money, that everything would be made up to me; and naturally I was arguing my point that he has got my account and he has been making on them the money, why can't he turn [fol. 683] it over to me. Then we came to the agreement that I turn over the accounts again to him and wait a little while and see how things turn out.

After that conversation things went along quietly. I got my money after that from Sahn, $50 a week, time off and time on again. When he didn't pay me the money, if I waited a week or so and he didn't pay me no money, I went ahead and I killed for those two butchers if I was able to get them back again, and whoever dropped in I killed for. A strange butcher once in a while dropped in that paid me cash. I didn't know them and I killed for them.

I know Charles Herbert. During one time he came around and told me he had a complaint that my shochet came in before union hours. I explained to him. He asked the shochet whether it was true or not and the

shochet denied it and that was the end if it. He was never in my place of business except on that one occasion. There was a man with him but I am not very well acquainted with any of the union delegates or shochtim delegates. I don't know the name of that other man.

About the time I dropped in the Chamber of Commerce and saw these people, I have told everything that I remember. In the first place I cannot stay there too long. I had no business up there and I was not a member of the Chamber of Commerce. I am not a member to-day. I had no connection with them. I just went up to see Mr. Fertig there. The only Benny Simon I am acquainted with is one that had a market on Edgewater Road.

That was the argument I had with Sam Sahn when he offered to give me the money as soon as business would turn better for him. That was weeks and weeks of argument. I told him I am sick and tired of the whole thing. "Either you are going to be honest with me or I won't be honest with you. I don't want the money any more." The result was everybody around from the Irving Poultry [fol. 684] mixed in and said, "What's the good of all this argument and discussion? I know Sam Sahn before you do, he never did me any harm, he never took anything away from me; he won't take anything away from you." The result was we let it go a few weeks more.

Cross-examination.

By Mr. Sager:

The Greater New York Live Poultry Chamber of Commerce has its office on 14th Street, in the Borough of Manhattan, New York City. That is right close to the West Washington Market. It consists of several rooms on the third floor. One is a large assembly room almost as big as this courtroom and it would seat quite a few people. Then they have a couple or three smaller offices. I have been there more than on this one occasion, on and off, and never have been a member of the Chamber. It is a place where men engaged in the poultry business and all branches of it assemble, whether they are members or not, go there to spend a few idle hours or to meet and play a game of cards and meet socially. The doors are not